RECORD, CASE No. 13,233.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 187.

JOHN I. ADAMS & CO., PLAINTIFFS IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 8, 1888.

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No. 9923.

Supreme Court of the State of Louisiana.

JOHN I. ADAMS & CO.
vs.
BOARD OF LIQUIDATION.

Appeal from the seventeenth judicial district court, parish of East Baton Rouge.

Transcript of record, returnable to the honorable the Supreme Court of the United States on the second Monday in October, 1888.

1 *Petition.*

To the honorable the 17th judicial district court for the parish of East Baton Rouge, State of Louisiana:

The petition of John I. Adams & Co., of New Orleans, in liquidation, composed of John I. Adams and Wm. H. Renaud, of that city, respectfully represents—

That they hold and own five certain bonds of one thousand dollars each, with interest coupons attached, dated August 1, 1864, and payable twenty years after date, with interest from date, payable semi-annually, at six per cent., which bonds were made by the State of Louisiana at that date, under act 16 of 1864, dated February the 8th, and *was* sold to Jeannette D. Wells, February 2nd, 1865, and were afterwards properly endorsed and assigned to your petitioners, the amount of said bonds, with interest, being, up to February 2nd, 1866, eighty-six hundred and forty dollars ($8,640). Said bonds were numbered 101, 102, 103, and 104, as per schedule annexed, and No. 101 is filed herewith and deposited for reference.

That the said bonds are legal and valid obligations of the State of Louisiana and disposed of in strict conformity to law and not in violation of the constitution of this State or of the United States, and were issued for a valuable and valid consideration, and that they are entitled to be funded in such valid obligations and
2 exchanged for consolidated bonds of the State, as provided for in act number three of 1874.

That your petitioner desires and is entitled to have them funded under and according to act No. 3 of 1874, known as the funding act, and to have them exchanged for consolidated bonds of the State, as provided for in the said act, at the rate of sixty per cent., and that he has presented the said bonds for such funding and exchange of the bonds to the board of liquidation provided for in said act, making amicable demand of the said board therefor, and that the said board have refused to do the said funding and exchange.

That Louisiana as a body politic not only made these solemn contracts with the payees and holders, but declared in her constitutions—in article 155 of the State and article 1, sec. 10, of the Federal—that she would not pass any law or do or allow any act or law

impairing the said obligations to stand and have effect; all of which your petitioner and the original payee or holder relied on in good faith when giving valuable and valid consideration for these bonds.

That all applicable remedial laws and all laws to facilitate and secure payment passed after these contracts were made became a part of said contracts, to every benefit of which law- your petitioners and other holders were entitled, and that your petitioner is deprived of that equal protection of the law which natural justice and
3 *fortiori* Federal amendment XIV and the State constitution require, as the governor in his late message says: "The State, as an individual, cannot afford to discriminate in its debt, making one a privilege- and another a dishonored obligation; all its creditors should be treated with the same degree of fairness." Petitioner is compelled to invoke this fairness in this tribunal because his bonds are rejected bonds, while hundreds and thousands, many of them less meritorious, have been funded and exchanged.

That the limit of the State debt to fifteen millions of dollars has not been reached, and that the board of liquidation have the power to issue and exchange for the bonds of your petitioner the consolidated bonds provided for in said act No. 3 of 1874, according to its terms, and that the refusal of the board to fund and exchange leaves your petitioners without adequate and available remedy, which the State had dutifully provided, and amounts to thwarting her will in denying justice to your petitioners.

Wherefore your petitioner prays that the board of liquidation be cited to answer thereto; that it be duly decreed that the said bonds were legal and constitutional obligations of the State of Louisiana, were issued in strict conformity with law, were and are not in violation of the State and Federal constitutions or either of them, and were given and transferred for a valuable consideration, and that the same are entitled to be funded and exchanged for con-
4 solidated bonds of said State, in conformity with the aforesaid act No. 3 of 1874, and for judgment declaring — under said act of 1874, and directing said board to exchange them for consolidated bonds, fundable. Petitioner also prays for all orders, judgments, and decrees that justice may require; for the preferences as to trial provided for in the said funding act; for all costs generally, as well as those provided for by the said act, and for general relief.

(Signed) E. W. ROBERTSON,
Attorney for Plaintiff.
B. J. SAGE,
Agent for Plaintiffs.

Affidavit.

Bernard J. Sage deposes and says, under oath, that he is agent for the parties as stated, and that all the obligations of the foregoing petition are true.

(Signed) B. J. SAGE.

Sworn to and subscribed before me this 5th July, 1886.

(Signed) F. A. NEPLER, *J. Peace.*

Exception of Res Judicata.

District Court, Parish of East Baton Rouge.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 981.

5 And now comes defendant, through the attorney general, and respectfully represents and avers that the same bonds sued on by plaintiffs herein constituted the cause of action in the case of B. J. Sage *vs.* The Board of Liquidation, No. 2919, civil district court, parish of Orleans, div. E, and No. 9246 on the docket of the supreme court of the State in which the identical demand was rejected; that the bonds issued under act 16 of 1864, sued on in both said cases, are held and owned by Monford Wells or his family; that B. J. Sage's interest therein is contingent upon his success in realizing upon them; that the nominal plaintiffs herein are persons interposed to avoid the plea of *res judicata* and are without absolute interest; that the real parties in interest in this suit are the same as in the other; that in said Sage case (37 A., 412) it was finally determined and adjudicated that said bonds issued under act 16 of 1864 were not issued according to law and are not fundable under act 3 of 1874, upon which questions said judgment is conclusive against the world; that the parties in interest are bound and concluded by the judgment and cannot avoid its effects by interposing other nominal plaintiffs in other suits; that the object, the cause of action, the parties in interest, and their qualities are the same in the two suits, and all the issues involved in this suit were fully adjudged and settled and adjudged in the former.

6 Wherefore the defendant interposes the plea of *res adjudicata* against plaintiffs' action, and prays that their suit be dismissed at their costs and for general relief.

(Signed) M. J. CUNNINGHAM, *Att'y Gen'l.*

Endorsed: No. 981. 17th judicial district court, parish of E. Baton Rouge. Jno. I. Adams & Co. *vs.* B'd of Liquidation. Filed Sept. 7th, 1886. (Signed) Wm. Hubbs, clerk. Exception of *res judicata.*

Answer.

17th Jud'l District C'rt, Parish of E. Baton Rouge.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 981.

Now comes defendant, by the attorney general, and without waiving the exception heretofore filed, but specially reserving and reiterating the same, for answer to plaintiffs' petition denies each and every allegation therein contained.

Respondent specially denies that the bonds sued on are fundable under act 3 of 1874, as amended by act 11 of 1876, or that they were contemplated by or embraced in the funding scheme proposed in said acts, for the following, among other, reasons:

The bonds authorized by act 16 of 1864 were not intended to be in accordance with the Constitution of the United States, but
7 were known and intended to be in *in* direct violation thereof, and in contempt of its authority, to relieve the treasury of the State, then as one of the Confederate States, at war with the United States Government, to aid in carrying on said war.

For this reason, if said bond was issued in conformity with said act 16, the State was forbidden to pay them by articles 119 and 139 of the State constitution of 1868, under which act 3 of 1874 and act 11 of 1875 are passed.

If said bonds were sold for Confederate or State treasury notes, as contemplated and required by said act 16, the courts of this State were prohibited from enforcing them by article 127 of the State constitution of 1868.

Said bonds were not issued in strict conformity with law, because they were exchanged for sugar and not sold, as contemplated and required by said act 16, and because said bonds were not signed by the secretary of state, & the coupons were not signed by the State treasurer, as required by said act 16.

Said bonds are not valid obligations of the State, and were not issued for a valid consideration.

Said bonds were not embraced in the list of State bonds and obligations presented in the auditor's report of 1874 as the basis of the action of the legislature at the time of the passage of act 3 of 1874 and act 11 of 1875.

8 Wherefore respondent prays that plaintiffs' demand be rejected and their suit dismissed at their costs and for general relief.

(Signed) M. J. CUNNINGHAM,
Attorney General.

Endorsed: No. 981. D. C. of E. Baton Rouge. John I. Adams & Co. *vs.* Board of Liquidation. Answer. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

State Bond.

By agreement of counsel (see page —) the bond, which is in original in the record of the district court, is not wholly copied here. There are altogether 39 coupons, coupon No. 1 having been detached.

CONFEDERATE STATES OF AMERICA, *State of Louisiana.*

No. 101. $1,000.

Know all men by these presents that the State of Louisiana acknowledges to be indebted in the sum of one thousand dollars, which sum the said State of Louisiana promises to pay to the bearer

hereof in twenty years from the date hereof, and also to pay an interest at the rate of 6 per cent. per annum, payable semi-annually, from the date hereof, at the office of the treasurer of the State of Louisiana, upon the delivery of the interest warrants in the
9 margin hereof, until the payment of said principal sum. This bond is issued by virtue of an act of the legislature of said State entitled "An act to authorize the sale of bonds for the relief of the treasury and final liquidation of the principal and interest thereof," approved February 8th, 1864.

In testimony whereof the governor of the State of Louisiana has signed these presents and the secretary of state has countersigned the same, and the seal of the State is hereto affixed.

Done at Shreveport the first day of August, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.] (Signed) HENRY W. ALLEN,
Governor.

" P. D. HARDY,
Secretary of State.

Coupon No. 2.

$30. THE STATE OF LOUISIANA. $30.

State bond No. 101 for $1,000.

Interest warrant for thirty dollars, payable at the office of the treasurer of the State of Louisiana, August 1, 1865.

No. 2.

(Signed) B. L. D., *Treasurer.*

Endorsement: Auditor's office, Shreveport, February 11th, 1865. This bond is the property of M. Wells, and is transferable only upon his endorsement hereon. (Signed) H. Peralta, State auditor. (Signed) M. Wells, per *pro* B. J. Sage. No. 981. 17th jud. dist. court. Filed July 8th, 1886. (Signed) Chas. Bergeron, d'y clerk.

10 *Testimony in Open Court.*

17th Jud. District Court, Parish of E. Baton Rouge.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 981.

Note of evidence on trial of exception.

Defendant's testimony.—Offers entire record in suit B. J. Sage *vs.* Board of Liquidation, No. 2919 in the civil district court, parish of Orleans, and No. 9426 in the supreme court, including the petition, marked A; answer, marked B; judgment of district court, C; judgment of supreme court, D, and the evidence therein, being three certificates of Auditor Jumel, E, F, G; evidence of Montfort Wells and James C. Wise, taken May 31st, 1881, under commission under L. V. Marie, not. pub., at Alexandria, La., in the above case, No.

2919, H; evidence of E. W. Halsey, sworn to before W. H. Goodale, April 12th, 1882, under commission in said case.

Defendants authorized to withdraw documents filed in evidence as above after they are copied in the transcript.

Admitted that the four bonds sued on in this case and the five bonds sued in the Sage case were all part of the 184 bonds acquired by Wells from the State at the same time and in the same transaction.

Defendant's testimony closed on exception.

11 Plaintiffs' testimony on exception.—Offer evidence of W. H. Renaud, taken by consent, marked K.

File document marked L as his evidence on this exception. Defendant does not object to the form of the testimony and agrees that it be taken in evidence of the facts therein stated, but not of the opinion therein expressed. (For testimony of Sage see page 50.)

Cross-examined:

B. J. SAGE says: I am agent and attorney for pl'ff in this case. I was pl'ff in the case of Sage *vs.* Board of Liquidation of the State of Louisiana.

I think I know where the bonds that were issued to Wells are.

I have been connected with and interested (in) these bonds for twelve or fifteen years; have been the att'y and adviser of the original holder of these bonds for 15 or 20 years.

These bonds are placed where they are now by me, either as owner or agent of the owners, with the understanding and reservation that I am to act as agent of the present owners in any settlement with the State that may be made when the State sees proper to settle the matter. I am fully authorized to represent the owners.

I have made considerable efforts to settle or collect these bonds with the legislature and public officials. In these efforts I represented the whole of these bonds except a few which have been lost.

12 In my own right I own, I think, about one-third of these bonds, with the obligation to attend to the settlement and litigation attending them, except those that have been transferred, and as part of the consideration referred to is a long list of arduous services for many years as attorney and agent, and whatever I do for any of these parties is to be justly compensated for.

The efforts that I have made in these respective suits have been confined to them, and any advantage to other interest would be incidental, though I have wished to promote the interest of all by any success I might attain.

I am now attorney or agent for 6 or 7 different holders of these bonds under the reservation above mentioned and only to that extent, with that control, to settle with the State, if the State will make proper terms.

Re-examined in chief:

These bonds were transferred to John I. Adams & Co., without any statement or understanding as to defects or equities between the parties. They were transferred before maturity.

Plaintiffs' testimony closed.
Answer filed.

17th Jud. District Court, Parish of East Baton Rouge.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 981.

On the merits.—By consent this case was taken up for trial on the merits.

13 *Plaintiffs' Testimony.*

Offer the four bonds sued on, with the coupons attached, Nos. 101, 102, 103, & 104, with the endorsement on them.

It is agreed that No. 101 go up with the original as a specimen without being copied in the transcript, and that the other three be withdrawn by the plaintiff.

Reoffer the testimony of W. H. Renaud and B. J. Sage taken on the trial of the exception, which is admitted subject to the objections before made by defendant to the statement made by B. J. Sage.

Offer power of attorney from Mrs. Wells and M. Wells to B. J. Sage (signature admitted), marked M.

Offer certificate of rejection by the board of liquidation, marked N.

Entry sale, marked O.

Entry auditor's order, &c., marked P.

Entry payment coupons, marked Q.

Certificate of auditor showing amount of consolidated bonds issued to this date, to be procured and filed of this date, to be marked R.

Offer receipt of Peralta, auditor, marked S.

Offer order of Montfort Wells to H. M. Wright, of date May 13, 1865, marked T.

Offer certificate of James Campbell, clerk of treasurer, marked U.

Offer testimony of Major Halsey, marked V.

Plaintiffs' testimony closed.

14–47 *Defendant's Testimony.*

Offers extract from auditor's report for 1874, marked W.

Offered for the purpose of showing that plaintiffs' bonds were not included in the list of bonds before the legislature for its consideration at the time of the passage of act 3 of 1874 and act 11 of 1875, and therefore as a circumstance that they were not embraced and contemplated in the funding scheme proposed by the State to its creditors.

To the above testimony plaintiffs objected, and the court admitted the evidence for the purpose stated.

To which ruling counsel for plaintiffs reserved a bill of exceptions.

Reoffer the evidences of Wells, Wise, and Halsey, embraced in documents H & I, previously offered on the trial of the exception, to show that the bonds were given in exchange for sugar and not sold, as claimed by plaintiffs.

Defendant's testimony closed.

Testimony closed. Filed December 16th, 1886.

Endorsed: No. 981. 17th jud. dist. court, East Baton Rouge. John I. Adams & Co. *vs.* Board of Liquidation. Testimony in open court. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

* * * * * * *

48 *Evidence of W. H. Renaud, Taken by Consent, Marked K.*

17th Dist. Court of East Baton Rouge.

JOHN I. ADAMS & CO.
vs.
BOARD OF LIQUIDATION. } No. 981.

49 *Testimony of Wm. H. Renaud, Taken by Consent by B. J. Sage and the Attorney General.*

W. H. RENAUD, in the above-entitled case, deposeth and saith:

I represent the firm of John I. Adams & Co., in liquidation, composed of John I. Adams, Jay L. Adams, W. H. Renaud, and Edward C. Adams. John I. Adams and W. H. Renaud are now the sole owners of the assets of said firm. Said firm in liquidation own four several bonds of the State of Louisiana, known as the Wells series, bearing date 1st August, 1864, issued by virtue of an act of the legislature of Louisiana entitled "An act to authorize the sale of bonds for the relief of the treasury and final liquidation of the principal and interest thereof," approved Feb'y 8th, 1864, and numbered 101, 102, 103, and 104, each for the sum of one thousand dollars, payable twenty years after date, all coupons attached, except No. 1, due Feb'y, 1865, for $30. These bonds were received from Mr. B. J. Sage in payment of a debt due my said firm by the said Mr. Sage in the month of June, 1881. I was induced to take these bonds because they were the unquestionable bonds of the State of Louisiana, and the seal, signatures, as well as the recital of the face that they were issued according to law.

The following is a copy of the entry made at the time by me in the memorandum book of original entries kept by my said firm:

50 "B. J. Sage, note $2,732.90. We take Sage's note of $2,732.90 and have M. H. Davnis' note as collateral. Ap. 7, '75.

"June 1881.—Settled cash $100; 4 State bonds, $1,000 each, left in Sage's hands."

The Davnis note was never paid, proving worthless, and the bonds left in Mr. Sage's hands were so placed for our account, to be collected by him as an attorney and agent.

(Signed) W. H. RENAUD.

All objections to the form of taking the above testimony are waived; but all objections to its admissibility in whole or in part are reserved.

New Orleans, Sept. 25th, 1886.

(Signed) M. J. CUNNINGHAM,
Attorney General.

" B. J. SAGE.

Endorsed: No. 981. K. 17th dist. court, parish of East Baton Rouge. John I. Adams & Co. *vs.* The B'd of Liquidation. Testimony of W. H. Renaud for *res judicata* and merits. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Document Marked L, B. J. Sage.

17 D. C., Baton Rouge.

JOHN I. ADAMS & CO.
vs.
BOARD OF LIQUIDATION.

51 I transferred the bonds in this suit, Nos. 101, 102, 103, and 104, before maturity to John I. Adams & Co., in 1881, long before any decision in Sage *vs.* Board of Liquidation, in payment of a debt due by me to them of over $1,900. I got these bonds from Mrs. J. D. Wells, the transferee of the State, through her husband and agent, M. Wells. I received and transferred them without any knowledge of defects, objections, or equities.

The judgment in the case of Sage *vs.* The Board of Liquidation, which is pleaded as *res judicata*, was based on a mistake of fact made by Gen. Wells, which caused error of pleading and evidence in that case. I have no ownership or interest involved in the result of this suit, but I wish to see the error corrected and justice done according to the evidence recently found in the State records, and I shall bring a new suit on the bonds not yet transferred, as well as others, to show and establish that the error in fact which caused the decision in Sage *vs.* Board and this plea was brought about by the State's own fault or misfortune, amounting to a suppression of records, which conclusively showed that the bonds were issued and sold in strict conformity with the law and by the authorities entrusted with their issue and delivery. Before pleading in that case I searched often and earnestly for the needed data, and especially for the entries of the issue and disposal of these bonds, which the law required to be made, and was told at the State treasurer's and auditor's offices

that there was no such data. The books from which we
52 now prove the said entries of sale were then in the auditor's office and under his control. The judgment pleaded as *res judicata* is error based on an alleged state of facts which is untrue, and the State is debarred from pleading that which she, through a suppression of truth, contributed. No man can take advantage of his own wrong.

Endorsed: No. 981. L. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Power of Attorney from Mrs. Wells and Mr. Wells to B. J. Sage—M.

RAPIDES PARISH, LOUISIANA, *A-ril 12th*, 1880.

Mr. B. J. Sage, New Orleans.

DEAR SIR: You are hereby authorized to endorse and transfer any of the bonds issued by Henry W. Allen, late governor of Louisiana, belonging to my wife, but issued in my name, to my order, for any purpose he may deem proper. He can sign my wife's name also when it is required in the management of said bonds.

(Signed) MONTFORT WELLS.
(Signed) JEANNETTE WELLS,
Authorized by Her Husband, Montfort Wells.

Endorsed: Montfort Wells' and Mrs. Wells' power of attorney to endorse, marked M. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

53 *Certificate of Rejection by the Board of Liquidation—N.*

STATE OF LOUISIANA,
AUDITOR'S OFFICE, BATON ROUGE, LA., 188–.

Application of B. J. Sage, att'y for John I. Adams & Co., of New Orleans, four bonds of $1,000 each, Nos. 101, 102, 103, and 104, issued under act of the legislature approved February 8th, 1864, entitled An act to authorize the sale of bonds for the relief of the State treasury, etc., with interest coupons due thereon from August 1st, 1865, when Major Burke submitted the following resolution, which was unanimously adopted:

Resolved, That, the bonds of the class offered to be funded by Mr. Sage having been passed upon unfavorably by the supreme court of the State, said bonds be rejected; and Mr. Sage was allowed to withdraw the above bonds which were delivered to him.

I certify the above to be a true and correct extract from the minutes of the board of liquidation held in the city of New Orleans February 18th, 1886.

Baton Rouge, Nov. 24, 1886.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: No. 981. N. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Entry of Sale, Marked O.

54 STATE OF LOUISIANA,
AUDITOR'S OFFICE, BATON ROUGE, *May* 31*st*, 1886.

This is to certify that in the book in this office marked "Journal, 1863–1865," under the heading "Receipts," is the following entry:

"Feb. 2, 1865. (16.) Sales of six per cent. bonds under act No. 16 of 1864. Order to Montfort Wells for purchase of 184 6 per cent. bonds of $1,000 each, issued under act No. 16 of 1864."

Given under my signature and seal of office this the 31st May, 1886.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: No. 981. "O." Entry sale journal auditor's office, $184,000. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Entry Auditor's Order—P.

STATE OF LOUISIANA,
AUDITOR'S OFFICE, BATON ROUGE, *May* 31*st*, 1886.

This is to certify that in the book of this office marked "Receipt Ledger," years 1860, 1861, 1862–1863, and 1864, page 257, is the following heading:

"Proceeds of sale of six per cent. bonds issued under act No. 16 of 1864;" and the following entry:

"Feb. 2d, 1865. (15.) Order to Montfort Wells for purchase of 184 6 per cent. bonds of $1,000 each, issued under act No. 16 of 1864, $184,000."

And I further certify that in the book of this office marked
55 "Fund Book," year- 1862, 1863, 1864, & 1865, is the following entry, page 102:

"Dr. general funds, Feb. 2 (16), $184,000."

Given under my signature and seal of office this the 31st day of May, 1886.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: P. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Entry Payment Coupon—Q.

STATE OF LOUISIANA,
AUDITOR'S OFFICE, BATON ROUGE, *May* 31*st*, 1886.

This is to certify that on the book in this office marked "Appropriation Book," page 295, (is?) the following caption:

"Interest on bonds issued under act No. 16 of 1864."

And the following entry:

"Feb. 2. (100.) Montfort Wells, per H. M. Wright, in payment of 184 coupons of interest, of $30 each, due 1st Febr'y, 1865, on State bonds issued under act 16 of 1864, $5,520."

I also certify that in the book marked "Journal 1863–1865" of this office is the following entry, under the head of expenditures:

"Feb. 2, 1865. (100.) Interest on bonds issued under act 16 of 1864, warrant to Montfort Wells, per H. M. Wright, in payment of 184 coupons of interest, of $30 each, due 1st Feb'y, 1865, on
56 State bonds issued under act No. 16 of 1864, $5,520."

Given under my signature and seal of office this the 31st of May, 1886.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: Entry of payment of coupons in auditor's office, "Q." Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Certificate of Auditor, Bonded Debt—R.

STATE OF LOUISIANA,
AUDITOR'S OFFICE, BATON ROUGE, —— —, 188–.

Bonded debt:

Bonds issued up to December 1st, 1885	$11,939,850 00
Issued subsequently	27,900 00
Par certificates issued outstanding the dates	1,325 26
Total bonded debt	$11,969,075 26
Old bonds and warrants outstanding and fundable at 60 cents on the dollar	$161,115 00
Outstanding general-fund warrants	119,864 10
Total	$280,979 10
Debt when funding is completed	$12,137,662 72

I certify the above and foregoing to be a correct statement of the bonded debt of the State of Louisiana and outstanding obligations fundable under act No. 3 of 1874.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: 981. R. Filed Dec. 16, '86. (Signed) Wm. Hubbs, clerk.

57 *Receipt of J. H. Peralta, State Auditor—S.*

Received, Shreveport, February 11th, 1865, from H. M. Wright, for account of M. Wells, one hundred and eighty-four dollars, amount of fee due me for registering 184 State bonds, in accordance with act No. 26 (16?) of 1864.

(Signed) H. PERALTA,
State Auditor.

Endorsed: Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y cl'k

Order of Wells to Wright—T.

WELLSWOOD, *May* 13, 1865.

To H. M. Wright:

Please hand to Mr. Isaac Levi or his order six thousand and twenty-five dollars in the State bonds you hold belonging to me, and you will oblige

Your obedient servant,

(Signed) MONTFORT WELLS.

Shreveport, June 1.

Endorsed: June 1st, 1865. Received on the within six thousand dollars. (Signed) Isaac Levy. T. 981. Filed Dec. 16, 1886. (Signed) Chas. Bergeron, d'y cl'k.

58 *Certificate of James Campbell—U.*

STATE OF LOUISIANA, TREASURER'S OFFICE,
BATON ROUGE, LA., *Dec.* 15, 1886.

I do hereby certify that there are no books or records of the treasurer's office for the years 1864 and 1865 relating to the transaction of the Allen government at Shreveport, the same being said to have been carried off by the Federals at the surrender, about June 1, 1865, and never returned to this office.

(Signed) JAMES CAMPBELL,
Clerk, State Treasurer's Office.

Endorsed: 981. Adams & Co. *vs.* B'd of Liq'n. Certificate of treasurer, marked "U." Filed Dec. 16, 1886. (Signed) Chas. Bergeron, deputy clerk.

Testimony of Major Halsey—V.

I was private secretary to Gov. T. O. Moore, 1860–'64, and Gov. Allen from 1864 to the surrender, in May, 1865. I was cognizant of nearly all the business in the executive office excepting during the session of the General Assembly at Shreveport early in 1864. Under act No. 16 of 1864, approved February 8th, 1864, the issue of $10,000,000 was authorized and some of said bonds were issued. I believe that bonds Nos. 102, 103, and 104 are of the series transferred to General Montfort Wells, of Rapides. Bond No. 102 I annex as genuine, all the signatures being correct and made by
59 agents lawfully authorized to *to* do so, and bind the State. These signatures are those of Henry W. Allen, governor; P. D. Hardy, secretary of state, and H. Peralta, State auditor. The signature "B. L. D." stamped in red on each coupon are those of B. L. Defreese, State treasurer. In a private book kept by me at that period for notes of daily transactions and as private secretary to Gov. Allen I made at the time the following memorandum on Sept. 24: "To Gen'l Wells to name agent to receive bonds," refer-

ring most probably to a letter written to him by me. All the offices and departments of the government were regularly organized and carried on and records duly kept. At the surrender the said records were taken possession — by the Federal authorities, about June 1, 1865, and, though they have been enquired and sought for since, they have not been found, so far as I know, except as to some judicial records and a few books in the auditor's office.

Endorsed: V. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Statement of O. B. Steele, Auditor—W.

Bonds outstanding January 1st, 1874.

No.	Denomination.	For what purpose issued.	Amount.
1500	500	Relief of State treasurer, act 277 of 1853	$750,000 00
884	1,000	New Orleans, Jackson & Great Northern Railroad Company, subscription to stock.	884,000 00
60			
441	1,000	New Orleans & Nashville railroad, subscription to stock.	441,000 00
650	1,000	New Orleans, Opelousas & Great Western railroad.	650,000 00
		Subscription stock.	
293	1,000	Vicksburg, Shreveport & Texas railroad, subscription to stock.	298,000 00
160	1,000	Baton Rouge, Grosse Tete & Opelousas railroad subscription to stock.	160,000 00
1000	1,000	Expenses of building levees, act 35 of 1865	1,000,000 00
4000	1,000	Ditto act 115 of 1867	4,000,000 00
448	1,000	Settlement of past-due coupons, act 15 of 1866	448,000 00
914	500	Do.	457,000 00
738	100	Do.	738,000 00
529	1,000	From school fund, act 182 of 1857	529,000 00
136	1,000	Seminary fund, act 182 of 1857	136,000 00
480	1,000	Mississippi & Mexican Gulf Canal Company, act 116 of 1869.	480,000 00
500	1,000	Louisiana State penitentiary, act 55 of 1869	500,000 00
1122	1,000	North La. & Texas railroad, act No. 108 of 1869	1,122,000 00
5920	500	Levee bonds, act 32, 1870	2,960,000 00
134	1,000	Relief of B. J. Kennedy, act 105 of 1870	134,000 00
2750	1,000	Funding and floating debt, act 69, E. S., of 1870	2,950,000 00
80	1,000	Benft. Concordia Navigation Co., act 146 of 1869	80,000 00
875	1,000	New Orleans, Mobile & Chattanooga R. R., act 31 of 1870.	875,000 00
750	1,000	New Orleans & Texas R. R., act 26 of 1869	950,000 00
2500	1,000	New Orleans and Chattanooga R. R., act 95 of 1871	2,500,000 00
250	1,000	Redemption of certificates of indebtedness, act 5 of 1866.	250,000 00
61			
3	1,000	Mexican Gulf Railroad Company, past due	3,000 00
3	1,000	Purchase of property for charity hospital, past due.	3,000 00
		Total	$20,433,800 00

I certify that the above and within tabulated statement is a true and correct extract from the statement G, in the auditor's report of 1874.

(Signed) O. B. STEELE, *Auditor.*

Endorsed: Extract from auditor's report of 1874. W. Filed Dec. 16, '86. (Signed) Chas. Bergeron, d'y clerk.

Bill of Exceptions.

17th District Court, Parish of East Baton Rouge.

JOHN I. ADAMS & Co.
vs.
THE BOARD OF LIQUIDATION.

Be it remembered that on this 16th day of December, 1886, on the trial of this cause the attorney for the defence offered an extract from the auditor of the State's report for 1874 for the purpose of showing that the plaintiffs' bonds in this suit were not included in the list of bonds before the legislature for its consideration at the time of passing act 3 of 1874 and act 11 of 1875, and therefore, as a circumstance, that they were not embraced and contemplated
62 in the funding scheme proposed by the State to its creditors.

The counsel for the plaintiff objected to the introduction of the same on the grounds of irrelevancy, and that the State is estopped by its recitals on the bonds from making any such showing and from questioning the validity of the bonds.

Which objections were overruled by the court and the testimony admitted, for the reason that the objections go to the effect and not to the admissibility of the evidence.

Whereupon the counsel for the plaintiff tenders this his bill of exceptions to the court's ruling, and prays that the same may be made a part of the record of this case and court.

(Signed) J. M. BURGERS,
Judge 17th Jud. Dist.

Endorsed: No. 981. John I. Adams & Co. *vs.* The Board of Liquidation. 17th jud. dist. Bill of exceptions. Filed December 17th, 1886. (Signed) Chas. Bergeron, d'y clerk.

Bill of Exceptions.

17th D. C. Court, Parish of East Baton Rouge.

JOHN I. ADAMS & Co.
vs.
THE BOARD OF LIQUIDATION.

Be it remembered that on the trial of *res judicata* in this cause on this the 16th day of December, 1886, the attorney for the defence offered in evidence the testimony taken in the case of Sage
63 *vs.* The Board of Liquidation, after having introduced the record in that case to sustain the plea or exception.

The counsel for the plaintiffs promptly objected to the introduction of the same on the ground of irrelevancy and *res inter alios acta*, and stated that the record was alone admissible to sustain the exception; but the court overruled the objection and admitted the testimony on the ground that the evidence proves *inter alios acta* could not be excluded when offered, as it was in this instance, to prove the identity of the issues in the two cases. The proof in this case tends to show that at the time the evidence was taken and offered in the Sage case, Mr. Sage, the plaintiff in that case and attorney in this, represented the present plaintiffs and the owners of the bonds sued on as attorney and agent. Counsel for plaintiff had agreed in open court, as I understood, not to object to evidence taken under commission in the Sage case on the ground that it was taken in another case and not in this. In the absence of an agreement the evidence of Wells would be admissible on account of his death, the parties not being the same. Under all the circumstances the evidence is clearly admissible.

Whereupon the counsel for the plaintiff tenders this his bill of exceptions to the court's ruling, and respectfully asks that the same may be signed and made a part of the record of this case and court.

(Signed) J. M. BURGESS,
Judge 17th Jud. Dist.

64 Endorsed: No. 981. John I. Adams & Co. *vs.* Board of Liquidation. Bill of exceptions in the evidence on exception of *res judicata*. Filed Dec. 17, 1886. (Signed) Chas. Bergeron, d'y clerk.

Reasons for Judgment.

JOHN I. ADAMS & CO.
vs.
THE BOARD OF LIQUIDATION. } No. 981.

This is an application to have four bonds, issued by the governor under act 16 of 1864, funded and exchanged for the consolidated bonds of the State under act No. 3 of 1874. The first act authorized the State to issue bonds to the amount of ten million dollars for the relief of the treasury.

Sec. 1 authorized the bonds to be engraved or printed to said amount.

Sec. 4 authorizeds the governor to sell the bonds for the benefit of the State or exchange for Confederate or State treasury notes not below par nor in greater amounts than the exigencies of the treasury may require.

SEC. 5. As said bonds are sold and money received, Confederate or State treasury, the governor shall cause to be cancelled an equal amount of State treasury notes then in the treasury, equal to the amount realized for the sale or exchange of the said bonds, and shall cause the proper entries — made in the treasurer's and auditor's books.

65 The defence is:

1st. The plea of *res judicata*, which was tried and submitted; and,

2dly. Answer to the merits that the bonds were not fundable under act 3 of 1874, as amended by act 11 of 1875, and were not embraced in the funding scheme proposed in said acts for the reason stated in the answer, on constitutional grounds, being a violation of the Constitution of the United States, and if issued in conformity to act No. 16 of 1864 the State was forbidden to pay them under arts. 119 and 129 of the State constitution of 1868, under which act 3 of 1874 was passed.

I deem it necessary only to notice the objection that the bonds sued on were not issued in conformity to act No. 16 of 1864, which required that they should be sold at par in Confederate or State treasurer notes, whereas they were exchanged for sugar. The exception of *res judicata* and the case tried on its merits and submitted the same day I shall consider together. I need not state that the case of B. J. Sage *vs.* Board of Liquidation, reported in 37 A., 412, are not the same parties. Suffice it to say that the bonds sued on in this case are admitted to be of the same issue as those sued in that case, and so far the disposal of the bonds for sugar by Gov. Allen, the whole amount of $184,000 of bonds sold by the Governor to General Wells for sugar.

66 The answer puts at issue this objection and is sufficient to bring the case under the case reported in 37 A., as before stated; but plaintiff contends that he has other evidence from the auditor's office to show that the order for the sale of the bonds was made and the interest paid on them to February 1st, 1865, and the receiving order does not alter the case. The presumption is that the State officer done his duty when he made or caused to be made the entries on the books. It had to appear that the bonds were disposed of in some way, and the entry shows they were; but the evidence shows that they were neither sold for Confederate money nor exchanged for State notes, but were given for sugar. The evidence of Gen'l Wells and of Mr. Wise shows how they were paid for by the former.

The presumption in favor of the acts of an officer is not a conclusive presumption. It prevails only until the contrary is shown. 37 A., 412. The case of B. J. Sage *vs.* The Board is fully passed on by the Supreme Court, and I find no evidence in the record to justify a different conclusion in this case than that arrived at by the Supreme Court in that case.

Plaintiff here contends that the acts of the legislature of 1864 are entitled to be regarded as valid and the bonds issued by the State under the legislative authority to be binding obligations, and quotes numerous authorities to show that the Supreme Court of the United States has so held; that the government- of the seceded States were necessary and their acts valid, so far as the good order and protection of the citizens were concerned. This may no

67 doubt be true; but in the case now being considered the objection is that the bonds were not issued according to the

provisions of the act itself. The authority was not to exchange for sugar, but to buy Confederate money or exchange for State notes.

Therefore, considering both the exception and the merits—

Judgment.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 981.

For the foregoing reasons, and the law and the evidence being in favor of the defendant board and against plaintiffs—

It is therefore ordered, adjudged, and decreed that this suit be dismissed at plaintiffs' costs.

February 3d, 1887.

(Signed) J. M. BURGESS,
Judge 17th Jud. Dist.

Endorsed: Filed Feb. 3, 1887. (Signed) Wm. Hubbs, clerk.

68 *Proceedings in Supreme Court.*

Final decree and opinion.

Supreme Court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *May 9th*, 1887.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA. } No. 9923.

Appeal from the civil district court for the parish of Orleans.

Mr. Justice Fenner pronounced the opinion and decree of the court in the words and figures following, to wit:

Plaintiffs are holders of four bonds for $1,000 each of the same series and character in every respect as the bonds which were included in the case of B. J. Sage *vs.* Board of Liquidation, decided by this court and reported in 37 A., 412. Although we held in that case that the bonds therein involved were not fundable, plaintiffs, represented by B. J. Sage as attorney, claim in this proceeding that their bonds, though standing precisely *in consimili casu*, are fundable, and demand judgment to that effect.

The bonds in both cases belong to a series of one hundred and eighty-four thousand dollars, issued, at one time, to the same person, Montfort Wells, in the same manner, and for the same consideration, under act No. 16 of 1864, passed by the legislature of the State which professed allegiance to the Confederate States.

69 We find in the record the following admission:

"The four bonds sued on in this case and the five bonds sued on in the Sage case were all part of the 184 bonds acquired by Wells from the State at the same time and in the same transaction."

Mr. Sage, as a witness in this case, testifies as follows:

"I think I know where the bonds that were issued to Wells are. I have been connected with and interested in these bonds for 12 or 15 years; have been the attorney and professional adviser of the original holders of these bonds for 15 or 20 years. These bonds are placed where they are now by me, either as owner or agent of the owners, with the understanding and reservation that I am to act as agent of the present owners in any settlement with the State that may be made. When the State sees proper to settle the matter I am fully authorized to represent the owners. I have made considerable efforts to settle or collect these bonds with the legislature and public officials. In these efforts I represented the whole of these bonds except a few, which have been lost."

"In my own right I own, I think, about one-third of these bonds, with the obligation to attend to the settlement and litigation attending them except those that have been transferred, and as a part of the consideration referred to is a long list of arduous services for many years as attorney and agent, and whatever I do for any of these parties is to be justly compensated. The efforts I have made in these respective suits have been confined to them, and any advantage to other interests would be incidental, though I have wished to promote the interest of all by any success I might attain. I am now attorney or agent for six or seven different holders of these bonds under the reservation above mentioned, and only to that extent, with that control, to settle with the State, if the State will make propositions."

The bonds in this case were transferred to plaintiffs during the pendency of the Sage suit, with the endorsement, "M. Wells, per *pro* B. J. Sage," said M. Wells being the registered owner, as appears from the auditor's certificate of registry on the back of the bonds.

The following is the power of attorney under which this transfer was made:

70 "Mr. B. J. Sage, New Orleans.

DEAR SIR: You are hereby authorized to endorse or transfer any of the bonds issued by Henry W. Allen, late governor of Louisiana, belonging to my wife, but issued in my name, to my order, for any purpose you may deem proper. He can sign in my wife's name also when it is required in the management of said bonds.

(Signed) MONTFORT WELLS.
JEANNETTE WELLS,
Authorized by Her said Husband, Montfort Wells."

Plaintiffs themselves testify that after the transfer "the bonds were left in Sage's hands to be collected by him as an attorney and agent."

In the petition in the first suit Mr. Sage alleged "that he holds as the assignee and agent of Mrs. J. D. Wells and other parties five certain bonds of one thousand dollars each," &c.

These foregoing statements grouped together plainly and conclusively indicate that at the time when he instituted the first suit Mr. Sage held the bonds now presented by plaintiffs by the same

right and in the same capacity in which he held the bonds then sued upon—*i. e.*, "as the agent and assignee of Mrs. J. D. Wells and other parties"—and that when *pendente lite* he transferred these bonds to John I. Adams & Co. he still retained possession of them and continued to represent the latter as he had the former owners.

Mr. Sage, thus representing the whole of these bonds and being the common agent of all the owners thereof for the express purpose of prosecuting their claims against the State, brought his
71 first suit upon five of these bonds in the declared capacity of "assignee and agent of Mrs. J. D. Wells and other parties."

In that petition, verified by his unqualified oath, Mr. Sage alleged that the bonds were issued and delivered in exchange for certain property delivered to the State government.

On the trial the testimony of Montfort Wells, the person to whom the bonds were issued, was taken, and he positively swore that the whole of these bonds were issued to him in exchange for sugar which had been raised upon a plantation belonging to his wife, Mrs. J. D. Wells. His statement was supported by the testimony of E. W. Halsey and of James C. Wise, officers then connected with the State government.

Upon these pleadings and the evidence we held that the bonds were not "issued in strict conformity to law," as required by the express terms of the supplemental funding act No. 11 of 1875, and therefore that they were not fundable.

See Sage *vs.* Board, 37 A., 412.

In the present case the plaintiffs omit the allegations which had been made in the Sage case with reference to the exchange, and content themselves with the general allegation on that point that the bonds were "sold to Mrs. J. D. Wells" and were issued "in strict conformity to law."

The plea of *res adjudicata* was interposed by the State, based on the record and judgment in the Sage case.

72 We think it would undoubtedly be good against Mrs. J. D. Wells and B. J. Sage, from whom Adams and Co. acquired the bonds now sued on. The case would be assimilated to that where the holder of two promissory notes given in the same transaction has brought suit on one of them, defended on the ground of fraud or other vice in the transaction on which both notes were based, and it is held that a judgment on that issue would be conclusive in a subsequent action on the other note.

Mr. Bigelow lays down the general rule: "A point once adjudicated by a court of competent jurisdiction may be relied on as an estoppel in any subsequent collateral suit in the same or any other court where either party or the privies of either party allege anything inconsistent with it, and this, too, whether the subsequent suit be upon the same or a different cause of action."

Bigelow on Estoppel, p. 45.
Johnson *vs.* Weld, 8 A., 126.
Gardner *vs.* Buckbee, 1st Conden, 120.
Edgell *vs.* Siegerson, 26 Mo., 583.
Hauley *vs.* Foley, 18 B. Monroe, 519.

And it has been pountedly affirmed by the Supreme Court of the United States in a very analogous case, where it was held that judgment in a suit upon certain municipal bonds, part of a larger issue, is conclusive on the question of validity of the issue in a suit between the same parties on other bonds of the same issue.

73 Beloit *vs.* Morgan, 7 Wall., 619.

It is a grave and doubtful question whether Adams & Co., acquiring these bonds from the parties to that suit *pendente lite* and leaving them in the hands of the principal party thereto as their agent and attorney, thus affecting them with the full knowledge of the pendency of the suit, have not thereby become privies and subject to the same estoppels which operate against their authors. It is not necessary, however, that we should decide this point on general principles, and we do not do so.

It is sufficient to consider it in reference to the peculiar action here involved, which is brought under the special provisions of the funding act No. 11 of 1875. That act regulates the duties of the board of liquidation touching the funding of bonds or warrants of the State, the legality or validity of which has been or may be questioned, and, in such case, it prohibits the funding "until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined by the supreme court of the State."

It evidently contemplates that this question, as to each issue, shall be determined in a single suit, and provides that "all costs incurred in any suit under this act to the extent — one suit carried to a final issue as to each separate issue of bonds or warrants * * * shall be borne by the State," &c.

74 In order to protect all rights which may be involved in such suit it expressly provides that all parties concerned, every tax-payer and "any holder or holders of bonds or warrants whose legality, &c., is questioned in any suit or suits brought under the provisions of this act, may intervene in said suit or suits brought under the provisions of this act, and that the costs of such intervention shall abide the result of the suits."

We have held that, inasmuch as a "final decree" of this court is an essential prerequisite to the funding, the warrant or bond holder may appeal to this court, even when the judgment below has been in his favor.

State *ex rel.* Meyers *vs.* Board, 33 A., 126.
Charles *vs.* Board, 37 A., 177.

It is clearly the equitable purpose of the law that the rights of all holders of the bonds or warrants of the same issue shall be settled by one decision, made in a case involving any of such bonds or warrants, and that all parties concerned should appear and vindicate their rights in such suit.

Whatever relaxation might be made in favor of a bondholder who had failed to take cognizance of such a suit through ignorance of its pendency, it would certainly be most inequitable to permit

parties situated like the present plaintiffs, who were represented as to the bonds held by them by the very plaintiff in that suit, to lie quietly by and take the chances of the decision, which, if
75 favorable, would have conclusively settled the status of their bonds, and then, after an adverse decision, to come in and raise issues absolutely contradictory of those then presented.

Their silence and failure to intervene, under the express authority to that effect granted by the law, may well be considered as an acquiescence in the issues as made in the suit and a submission to the judgment rendered thereon.

But the plaintiffs here go much further than this. Not only do they claim exemption from any prejudice by reason of said judgment, but they seek to exclude from our view the case which was therein made and the evidence on which our decision rested. The State offered the entire record in the Sage case, including the evidence offered therein, to which plaintiffs objected, on the ground that it was *res inter alios acta*, and they excepted to the ruling of the judge admitting it. We think the ruling was manifestly correct. No one can read the funding act of 1875 without discovering its clear intention to make the decision of a certain suit as to each issue of the bonds at least *prima facie* conclusive as to the fundability *vel non* of all the bonds of that series. We go to the verge of indulgence to holders of bonds not parties to such a suit if we allow them the privilege of rebutting such presumption by producing new evidence, which, if it had been presented in the former suit, would have led to a different conclusion; but in so doing the new evidence
76 must be taken in connection with the former, and the whole must be weighed together, and we must then determine whether, on such consideration, we should reach a different conclusion.

Thus in the Sage case, upon the evidence then introduced, we held that the issue of bonds, to which those of plaintiffs belonged, was made as an exchange for sugar, and therefore not "in strict conformity to law." Now plaintiffs come and ask us to decide the contrary and to hold that those bonds were not exchanged, but were sold for money, as directed by the law. The least that can be required of them is surely that they should make a stronger case in favor of their position than was made in support of the former; and in order to do so they must present the whole together, for, while they represent but four bonds, we are called on to render a decision binding on the State as regards 184 bonds, and overthrowing a former decision on the same question.

Under this view, receiving and considering the testimony presented in the Sage case, we are left without a shadow of doubt that the allegations then made were true; that the bonds were unquestionably exchanged for sugar, and were not sold as directed in the act under which they were issued.

Who should have known the facts so well as Montfort Wells, who conducted the transaction and who most circumstantially testifies that he refused to sell the sugar for the money then current and

would accept no settlement except in bonds? His testimony
77 is supported by that of other witnesses, and is contradicted by nothing except entries on the auditor's books of the same character, though a little more extensive, as those which were presented and discussed by us in the Sage case. We are satisfied that the entries were merely formal, made to satisfy the requirements of the State's method of book-keeping.

Nothing could be more improbable than the theory that the governor had paid to Wells $184,000 in currency for the sugar with which Wells had bought the bonds, nor is any showing made that the governor had any such funds of the State in his possession or any authority of law to dispose of them.

In addition to the foregoing we may say that the decision of the court in the Pacific railroad case, 30 A., 980, substantially holds that only the issue- of bonds and warrants enumerated in the auditor's reports of 1874 were embraced in the funding scheme, and the evidence here shows that these bonds were not included therein. We doubt if they have ever been included as debts of the State in any auditor's reports since the reconstruction constitution of 1868. It would require great hardihood for any one to say it was the intention of the legislatures which framed these funding laws to embrace these bonds or to authorize their funding.

Nor is this case in the slightest degree affected by any equities which plaintiffs might claim under the law governing nego-
78 tiable instruments. That question was fully settled in Lord Cecil's case, 30 A., 34, where, with obvious correctness, it was held that in proceedings to fund under these laws the court was not called upon to determine all the legal rights which transferrees of negotiable bonds before maturity might have against the State, but simply their right to fund under these special laws, which right could only be asserted on strict compliance with the conditions imposed by the laws, which conditions apply equally to all obligations by whomsoever and under whatsoever title they may be held.

Judgment affirmed.

79 *Agreement of Counsel. Filed October 15th*, 1887.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 9923.

It is agreed that one of the bonds sued on in this case shall be copied with one coupon and go up in that way to the Supreme Court of the United States instead of the original, as formerly agreed to.

New Orleans, Oct. —, 1887.

(Signed) B. J. SAGE,
For Plaintiffs.

" M. J. CUNNINGHAM,
Att'y Gen'l of La.

80 *Bond for Writ of Error. Filed Jan.* 28, 1888.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 9923.

Know all men by these presents that we, John I. Adams & Co. and E. P. Cottraux and P. Poursine, are held and firmly bound unto the Board of Liquidation of the State of Louisiana in the full and just sum of three hundred dollars, to be paid to the said Board of Liquidation or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at a term of the supreme court of the State of Louisiana, in a suit depending in said court between John I. Adams & Co., plaintiffs, and The Board of Liquidation of the State of Louisiana, defendants, a judgment was rendered against the said John I. Adams & Co., and the said John I. Adams & Co. having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Liquidation citing and admonishing them to be and appear *to* a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said John I. Adams & Co. shall prosecute this writ of error to effect and answer all damages and costs if they fail to make their
81 plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JNO. I. ADAMS & CO.
E. P. COTTRAUX.
P. POURSINE.

Sealed and delivered in presence of—
(Signed) C. W. STORK.
FRANKLIN MIX.

Approved by—
(Signed) M. J. CUNNINGHAM,
Att'y Gen'l of La.

82 *Bond for Writ of Error. Filed June* 8, 1888.

JOHN I. ADAMS & Co.
vs.
BOARD OF LIQUIDATION. } No. 9923.

Know all men by these presents that we, John I. Adams & Co. and E. P. Cottraux and P. Poursine, are held and firmly bound unto

the Board of Liquidation of the State of Louisiana in the full and just sum of three hundred dollars, to be paid to the said Board of Liquidation or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a term of the supreme court of the State of Louisiana, in a suit depending in said court between John I. Adams & Co., plaintiffs, and The Board of Liquidation of the State of Louisiana, defendants, a judgment was rendered against the said John I. Adams & Co., and the said John I. Adams & Co. having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Liquidation, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said John I. Adams & Co. shall prosecute the writ of error to
83 effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; *also* to remain in full force and virtue.

(Signed) JOHN I. ADAMS & CO.
E. P. COTTRAUX.
P. POURSINE.

Sealed and delivered in presence of—
(Signed) C. W. STORK.
FRANKLIN MIX.

Approved by—
(Signed) M. J. CUNNINGHAM,
Att'y Gen'l of La.

Approved Jan'y 31, 1888.

84 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, George Augustin, deputy clerk of the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, hereby certify the foregoing eighty-three (83) pages contain a true, faithful, and correct copy of the record of the proceedings had in the seventeenth judicial district court for the parish of East Baton Rouge in a certain case wherein John I. Adams & Co. were plaintiffs and The Board of Liquidation of the State of Louisiana was defendant; which said record is on the files of this court under No. 9923, with the exceptions of the following documents, not copied by direction of counsel for plaintiffs:

1. Citation, at page 18 of transcript from lower court.
2. Same, " " 3 " " " " "
3. Minutes of court, 57 " " " " "
4. Order of court, 58 " " " " "
5. Appeal bond, 58 " " " " "
6. Clerk's certificate, 59 " " " " "

Also a true copy of the opinion and decree delivered by this court in said suit; also a true copy of the agreement of counsel and bonds for writ of error filed herein.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 20th day of July, A. D. 1888, & in the 111th year of the Independence of the United States of America.

GEO. AUGUSTIN,
Deputy Clerk.

85 *Certificate Legalizing Signature of Deputy Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, hereby certify that George Augustin is deputy clerk of the supreme court of the State of Louisiana, holding sessions in the city of New Orleans; that the signature to the within certificate is in the proper handwriting of him, the said deputy clerk; that said certificate is in due form of law, and that due faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 20th day of July, A. D. 1888.

[Seal Supreme Court of the State of Louisiana.]

E. BERMUDEZ,
Chief Justice.

86 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John I. Adams & Co., plaintiffs, and The Board of Liquidation of the State of Louisiana, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity,

or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause
87 of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirty-first day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Justice Sup. C't U. S.

[Endorsed:] Original. 9923. John I. Adams & Co. *vs.* Board of Liquidation. Writ of error. Supreme court of Louisiana. Filed Jun- 18, 1888. George W. Dupre, clerk.

88 The United States of America to the Board of Liquidation of the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John I. Adams & Co. are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this thirty-first day of Janu-

ary, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN M. HARLAN,
Justice Supreme Court U. S.

89 On this second day of July, in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared John H. Leary before me, the subscriber, James D. Rankin, deputy clerk civil district court for the parish of Orleans, State of Louisiana, and makes oath that he delivered a true copy of the within citation to Governor Francis T. Nicholls, president of the board of liquidation of the State of Louisiana, in person.

JOHN H. LEARY,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Sworn to and subscribed the seventh day of July, A. D. 1888.

{ Seal Civil District Court for the Parish of Orleans, State of Louisiana. }

JAS. D. RANKIN,
D'y Cl'k, Civil District Court for the Parish of Orleans.

[Endorsed:] (Original.) No. 9923. John I. Adams & Co. *vs.* Board of Liquidation. Citation for return. Supreme court of Louisiana. Filed July 7, 1888. George W. Dupre, clerk.

90 Supreme Court of the United States, October Term, 1890.

B. J. SAGE, Plaintiff in Error,
vs.
THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, Defendant in Error. } No. 222.

JOHN I. ADAMS & Co., Plaintiffs in Error,
vs.
THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, Defendants in Error. } No. 537.

It is agreed by counsel that the two above cases, numbered 222 and 537, shall be tried together in this court when the second case, No. 537, shall be reached on the regular docket.

And that the part of the record in the Sage case, No. 222, which was admitted as evidence on the plea of *res judicata* in the Adams & Co. case, No. 537, which is to be fully printed in said case 222, shall not be reprinted in the said case No. 537, as the two cases will be consolidated and tried together.

B. J. SAGE,
Att'y for B. J. Sage and John I. Adams & Co., Plaintiffs in Error.
W. H. ROGERS,
Att'y Gen'l, for Def'ts in Error.

In printing record 537, Adams & Co. *vs.* B'd Liq'n, omit the part of Sage *vs.* The Board, No. 222, now in 537, from top of p. 15 to near the bottom of p. 48.

Wash'n, D. C., July 20, '91.

B. J. SAGE.

91 [Endorsed:] Supreme Court U. S. 1890, October term. Nos. 21, 187. B. J. Sage *vs.* Board of Liquidation of La. & John I. Adams & Co. *vs.* Same. Stipulation to try cases together and as to printing record. Filed Nov'r 10, 1890.

Endorsed on cover: Case No. 13,233. Louisiana sup. court. No. 187. John I. Adams & Co., plaintiffs in error, *vs.* The Board of Liquidation of the State of Louisiana. Filed October 8, 1888.

FILED
MAR 15 1892
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1891.

No. 21.

B. J. SAGE, PLAINTIFF IN ERROR,

versus

THE BOARD OF LIQUIDATION.

No. 187.

JNO. I. ADAMS & CO., PLAINTIFFS IN ERROR,

versus

SAME.

CONSOLIDATED.

In Error to the Supreme Court of Louisiana.

BRIEF FOR DEFENDANT.

WALTER H. ROGERS,
Attorney General of Louisiana for Defendants.

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In 1864, the State of Louisiana was a member of the government known as the Confederate States of America. At that date history informs us there was a state of war between the United States of North America and the said Confederate States. The armed forces of these two governments met in actual combat within the borders of the State. It is also a matter of history that New Orleans and Baton Rouge, the capitol, were in posses-

sion of the Federal government. For this reason, the State Capitol had been removed to Shreveport, at which place the act approved February 8th, 1864, was enacted, and where the circumstances giving foundation for this suit occurred.

The bonds were prefaced:

"Confederate States of America—State of Louisiana." Page 24, Record case No. 21.

The Act of 1865 authorized the issue of bonds to be sold by the Governor for the benefit of the State, or exchanged for treasury notes either Confederate or State.

General Montford Wells, as agent for his wife, received from the State's agent 184 of these bonds of one thousand dollars each. The Supreme Court of Louisiana held that these bonds had not been purchased by Wells, but he had exchanged sugar for them. The testimony certainly sustains the Court.

In 1868 a constitution was adopted by the people of the State Among the provisions of that instrument are the following articles:

Art. 119—No liability, either State, parochial or municipal, shall exist for any debts contracted for, or in the interest of the rebellion against the United States government.

Art. 127—All agreements, the consideration of which was Confederate money notes, or bonds, are null and void, and shall not be enforced by the courts of the State.

Art. 129—The State of Louisiana shall never assume nor pay any debt or obligation contracted or incurred in aid of the rebellion * * * * *.

Art. 148.—The ordinance of secession of the State of Louisiana passed twenty-sixth of January, eighteen hundred and sixty-one, is hereby declared to be null and void * * *

In 1874 and 1875, the Legislature elected under the Constitution of 1868 enacted the following laws: I use the plaintiffs' extracts as sufficient for all purposes.

ACT No. 3 OF 1874.

An act to provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a Board of Liquidation; to authorize certain judicial proceedings against it. * * *

Sections 1 and 2 provide for a Board of Liquidation, and the preparation of $15,000,000 of 7 per cent. consolidated bonds.

Section 3 provides "that the bonds authorized by section one shall be signed by the Governor, Auditor and Secretary of State,

and the coupons shall be signed by the Auditor and Treasurer, and when so prepared, the said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State, and all valid warrants, drawn previous to the passage of this act, by the respective Auditors of Public Accounts of the State on the Treasurer thereof, except warrants issued by the Auditor in payment of the constitutional officers of the State at the sale of sixty cents in consolidated bonds for one dollar in outstanding bonds and all vavid warrants; *provided* that the holder of said bond or valid warrant, rejected by a majority of said board, may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act * * *."

ACT No. 11 OF 1875.

An act supplemental to Act No. 3 approved January 24, 1874, and to provide for the testing, at the instance of any tax payer, in the courts of the State, the legality and validity of any items of State indebtedness, the legality and validity of what may have been, or may hereafter be, questioned; to prevent the Board of Liquidation under said Act No. 3 of 1874, from funding the questionable and doubtful obligations of the State, named or designated in this act, until the same shall have been finally declared legal and valid, by the Supreme Court of the State of Louisiana, * * *."

Section 1 provides "that the Board of Liquidation constituted by the second section of Act No. 3, approved January 24, 1874, entitled an act to provide for funding obligations of the State, by exchange of bonds, etc., is hereby prohibited from issuing any bonds in exchange for any outstanding bonds of the State, or warrants drawn previous to the passage of said act by the respective Auditors of Public Accounts of the State on the Treasury thereof, forming items of State indebtedness, the legality and validity of which may have been, or may hereafter be, questioned, until said bonds or warrants shall first, by final decree of the Supreme Court of the State of Louisiana, have been declared legal and valid obligations of the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the constitution of this State, or of the United States, and for a valid consideration. That any person assessed for State taxes is hereby authorized in his own name, to institute suit, or to intervene in any suit, which may now or hereafter be instituted in a court of competent jurisdiction, in the parish of Orleans, against said Board of Liquidation to test the legality or validity of any issue of bonds of the State or warrants drawn previous to the passage of said act No. 3, by the Auditor of Public Accounts, on the State Treasury, the legality or validity of which may have been, or may hereafter be questioned; and to inquire into the consideration for which said

warrants may have been issued, and in his own name to prosecute such suit or suits to a final termination; and until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined, by the Supreme Court of the State of Louisiana; and that, in order to facilitate and bring to a speedy termination all matters in controversy, as provided for in this act, every suit hereby instituted, shall have precedence in all courts over all other cases, and to be fixed by motion of either party; the day of trial to be named in the motion, and all other cases fixed for the day named in the motion, fixing such cases for trial, to give way thereto; that all costs incurred in any suits under this act, to the extent of one suit carried to a final issue, as to each separate issue of bonds or warrants, the legality, validity or consideration of which are questioned, if the court shall so determine shall be borne by the State of Louisiana; * * * *provided* that any holder or holders of bonds or warrants whose legality, validity or consideration, is questioned in any suit or suits brought under the provisions of this act, may intervene in said suit or suits, and that the costs of such interventions shall abide by the result of the suits in which such interventions shall be filed.

Section 2 declares a list of over $15,000,000 of bonds "questioned and doubtful, as to their legality and validity," and prohibits their being funded and exchanged, except under the final decree referred to of the Supreme Court, among them was more than a million which the carpet-baggers stole or sold or issued or reissued, and the most of the others—$14,000,000 or more, were swindles.

Act 58 of 1877, provides that the Board of Liquidation shall, after the passage of this act, "investigate and ascertain accurately the exact amount, character and description of the valid bonds, * * * contemplated in act 3 of 1874, to be funded and exchanged for consolidated bonds, which have not yet been funded and converted, * * * to the end that the total debt of the State may be officially established, * * * *." The act appropriates $5000 for its purposes.

Availing themselves of these acts the plaintiffs submitted their claims to the courts of the State, asking that they be granted an exchange of bonds at the rate of sixty cents on the dollar. The courts of the State decided against the plaintiffs.

The Supreme Court of Louisiana has had frequent opportunity for interpretation of this law. See State ex rel. R. R. Co. vs. Nicholls, 30 La. Ann. 982; Adams & Co vs. Board of Liquidation, 39 La. Ann. 690, from this latter decision one of these writs is prosecuted.

It is manifest the only question before the Court is one of

fundability, not *of validity*. Bonds of the State of Louisiana may be *valid* and *fundable*, but for one reason or another, might evidently be perfectly *valid*, but at the same time not *fundable* at all. There is *no contract* between the plaintiffs and the State, under which the *right to fund* the bonds in suit, arises in favor of the latter, at sixty per cent. In the nature of things, such a contract, could not enter into the bonds originally. If the case was otherwise, the bonds must have been infected from the beginning, and would consequently have been absolutely unnegotiable. Plaintiffs never would have, never could have acquired them. For the State to issue a bond, with the obligation on the part of the bondholders, to fund at such a rate of discount, would suppose the destruction in advance, of what the State proposed to secure. The theory that by the course of varying events, and of the vicissitudes covering a quarter of a century, the State being led to propose on certain terms and conditions to holders of certain bonds to fund at sixty per cent, as was actually done in 1874, the proposition so made and into, *formed part of the obligation of the bond itself and is an impossible theory.*

In *Durkee vs. Board of Liquidation*, 103 *U. S.* 647, where the Supreme Court of the United States had under consideration the funding act of 1874, and the act of 1875, amendatory thereof, the Court, treating of the bonds issued to the New Orleans, Mobile and Texas Railroad, said by Justice Miller: "In 1876, the "Legislature of the State passed an act declaring the bonds "in question, void, and forbidding the Board to receive them "as valid in the scheme of liquidation. The Legislature un- "doubtedly had the right to forbid its own agents to receive "these bonds. This must have affected their value; it certainly "could not make them void if they were valid before; but it "could prevent the Board from exchanging them for other bonds. "There was no contract with the holders of these bonds that "this should be done even if they were valid:"

In *Guarantee Company vs. Board of Liquidation*, 105 U. S. 625, where Chief Justice Waite gave the opinion, the same Court said: "We think the State of Louisiana had a right to say, "when it proposed a scheme for the compromise of its debts,

" what creditors should be included. That in our opinion is all " that has been done."

The learned counsel discusses with some degree of severity, the Supreme Court of the State. He is perfectly familiar with the rules of practice in the State and his complaint that the defendants failed to properly plead to his averments, must fall with the adverse judgments of the Supreme Court. The bonds held by Sage and the bonds held by Adams & Co. are identical in series and born of the same womb; they are part and parcel of the 184 bonds given as the Supreme Court finds in exchange for sugar. If one of the number cannot be funded the others are in like condition. We may be excused for saying, plaintiffs' position is ungrateful at best. They should not complain if the Court in fixing its reasons for adverse judgments, declined to discuss very serious questions which involved the utter and absolute nullity of his bonds. An examination of this testimony in the record is all that is required, under both State and Federal laws, to decline any recognition of these obligations.

The following extract from the testimony of E. W. Hulsey, Record 21, p. 10, is submitted:

Answer to Int. 3. Was acquainted with Gen. Monford Wells, of Rapides, the husband of Mrs. J. D. Wells; remember something of the transaction in sugar; impression at the time was that the whole would have fallen into the hands of the Federals and become a total loss; that Gen. Wells preferred to turn them over to the State as a loan, taking State bonds as evidence, etc.; find in a memorandum kept for my own use, under date of June 7, 1865, these words: "Wise. Statement of Wells' sugar loaned." The transaction must have been began as far back as September, 1864, because in said memorandum book is the following:

"Sep. 24. To Gen. Wells to name agent to receive bonds." The business was done through Col. James C. Wise, now of Rapides, who was State quartermaster, appointed by Gov. Allen, or through Isaac Levy, agent of Gov. Allen. The entry first quoted probably referred to a statement of the quantity of sugar received up to that time from Gen. Wells. The sugar, or the principal part of it, was sent into Texas by order of Gov. Allen, to be exchanged for cotton for exportation or for supplies as could be obtained there. (See entries in memorandum book at Nov. 25 and April 8.) The surrender defeated this intention in part, and much of the sugar was unlawfully taken on the road or while in store in Texas

during the confusion and relaxation of all military and civil restraint incident to the "break-up."

The Supreme Court of Louisiana has dealt fairly with plaintiffs. It would have been better to have left the cases with that tribunal. This Court will in disposing of this issue follow the rule established by Durkee vs. Board, 103 U. S. p. 647; Guarantee Co. vs. Board, 105 U. S. p. 625.

Respectfully submitted,

WALTER H. ROGERS,

Attorney General of Louisiana for Defendants.

MAR 15 18
JAMES H. McKENN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1891.

No. 21.

B. J. SAGE, PLAINTIFF IN ERROR,

versus

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and the coupons shall be signed by the Auditor and Treasurer, and when so prepared, the said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State, and all valid warrants, drawn previous to the passage of this act, by the respective Auditors of Public Accounts of the State on the Treasurer thereof, except warrants issued by the Auditor in payment of the constitutional officers of the State at the sale of sixty cents in consolidated bonds for one dollar in outstanding bonds and all vavid warrants; *provided* that the holder of said bond or valid warrant, rejected by a majority of said board, may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act * * *."

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Section 1 provides "that the Board of Liquidation constituted by the second section of Act No. 3, approved January 24, 1874, entitled an act to provide for funding obligations of the State, by exchange of bonds, etc., is hereby prohibited from issuing any bonds in exchange for any outstanding bonds of the State, or warrants drawn previous to the passage of said act by the respective Auditors of Public Accounts of the State on the Treasury thereof, forming items of State indebtedness, the legality and validity of which may have been, or may hereafter be, questioned, until said bonds or warrants shall first, by final decree of the Supreme Court of the State of Louisiana, have been declared legal and valid obligations of the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the constitution of this State, or of the United States, and for a valid consideration. That any person assessed for State taxes is hereby authorized in his own name, to institute suit, or to intervene in any suit, which may now or hereafter be instituted in a court of competent jurisdiction, in the parish of Orleans, against said Board of Liquidation to test the legality or validity of any issue of bonds of the State or warrants drawn previous to the passage of said act No. 3, by the Auditor of Public Accounts, on the State Treasury, the legality or validity of which may have been, or may hereafter be questioned; and to inquire into the consideration for which said

warrants may have been issued, and in his own name to prosecute such suit or suits to a final termination; and until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined, by the Supreme Court of the State of Louisiana; and that, in order to facilitate and bring to a speedy termination all matters in controversy, as provided for in this act, every suit hereby instituted, shall have precedence in all courts over all other cases, and to be fixed by motion of either party; the day of trial to be named in the motion, and all other cases fixed for the day named in the motion, fixing such cases for trial, to give way thereto; that all costs incurred in any suits under this act, to the extent of one suit carried to a final issue, as to each separate issue of bonds or warrants, the legality, validity or consideration of which are questioned, if the court shall so determine shall be borne by the State of Louisiana; * * * *provided* that any holder or holders of bonds or warrants whose legality, validity or consideration, is questioned in any suit or suits brought under the provisions of this act, may intervene in said suit or suits, and that the costs of such interventions shall abide by the result of the suits in which such interventions shall be filed.

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It is manifest the only question before the Court is one of

fundability, not of *validity*. Bonds of the State of Louisiana may be *valid* and *fundable*, but for one reason or another, might evidently be perfectly *valid*, but at the same time not *fundable* at all. There is *no contract* between the plaintiffs and the State, under which the *right to fund* the bonds in suit, arises in favor of the latter, at sixty per cent. In the nature of things, such a contract, could not enter into the bonds originally. If the case was otherwise, the bonds must have been infected from the beginning, and would consequently have been absolutely unnegotiable. Plaintiffs never would have, never could have acquired them. For the State to issue a bond, with the obligation on the part of the bondholders, to fund at such a rate of discount, would suppose the destruction in advance, of what the State proposed to secure. The theory that by the course of varying events, and of the vicissitudes covering a quarter of a century, the State being led to propose on certain terms and conditions to holders of certain bonds to fund at sixty per cent, as was actually done in 1874, the proposition so made and into, *formed part of the obligation of the bond itself and is an impossible theory.*

In *Durkee vs. Board of Liquidation*, 103 *U. S.* 647, where the Supreme Court of the United States had under consideration the funding act of 1874, and the act of 1875, amendatory thereof, the Court, treating of the bonds issued to the New Orleans, Mobile and Texas Railroad, said by Justice Miller: "In 1876, the "Legislature of the State passed an act declaring the bonds "in question, void, and forbidding the Board to receive them "as valid in the scheme of liquidation. The Legislature un- "doubtedly had the right to forbid its own agents to receive "these bonds. This must have affected their value; it certainly "could not make them void if they were valid before; but it "could prevent the Board from exchanging them for other bonds. "There was no contract with the holders of these bonds that "this should be done even if they were valid:"

In *Guarantee Company vs. Board of Liquidation*, 105 U. S. 625, where Chief Justice Waite gave the opinion, the same Court said: "We think the State of Louisiana had a right to say, "when it proposed a scheme for the compromise of its debts,

" what creditors should be included. That in our opinion is all " that has been done."

The learned counsel discusses with some degree of severity, the Supreme Court of the State. He is perfectly familiar with the rules of practice in the State and his complaint that the defendants failed to properly plead to his averments, must fall with the adverse judgments of the Supreme Court. The bonds held by Sage and the bonds held by Adams & Co. are identical in series and born of the same womb; they are part and parcel of the 184 bonds given as the Supreme Court finds in exchange for sugar. If one of the number cannot be funded the others are in like condition. We may be excused for saying, plaintiffs' position is ungrateful at best. They should not complain if the Court in fixing its reasons for adverse judgments, declined to discuss very serious questions which involved the utter and absolute nullity of his bonds. An examination of this testimony in the record is all that is required, under both State and Federal laws, to decline any recognition of these obligations.

The following extract from the testimony of E. W. Hulsey, Record 21, p. 10, is submitted:

Answer to Int. 3. Was acquainted with Gen. Monford Wells, of Rapides, the husband of Mrs. J. D. Wells; remember something of the transaction in sugar; impression at the time was that the whole would have fallen into the hands of the Federals and become a total loss; that Gen. Wells preferred to turn them over to the State as a loan, taking State bonds as evidence, etc.; find in a memorandum kept for my own use, under date of June 7, 1865, these words: "Wise. Statement of Wells' sugar loaned." The transaction must have been began as far back as September, 1864, because in said memorandum book is the following:

"Sep. 24. To Gen. Wells to name agent to receive bonds." The business was done through Col. James C. Wise, now of Rapides, who was State quartermaster, appointed by Gov. Allen, or through Isaac Levy, agent of Gov. Allen. The entry first quoted probably referred to a statement of the quantity of sugar received up to that time from Gen. Wells. The sugar, or the principal part of it, was sent into Texas by order of Gov. Allen, to be exchanged for cotton for exportation or for supplies as could be obtained there. (See entries in memorandum book at Nov. 25 and April 8.) The surrender defeated this intention in part, and much of the sugar was unlawfully taken on the road or while in store in Texas

during the confusion and relaxation of all military and civil restraint incident to the "break-up."

The Supreme Court of Louisiana has dealt fairly with plaintiffs. It would have been better to have left the cases with that tribunal. This Court will in disposing of this issue follow the rule established by Durkee vs. Board, 103 U. S. p. 647; Guarantee Co. vs. Board, 105 U. S. p. 625.

Respectfully submitted,

WALTER H. ROGERS,

Attorney General of Louisiana for Defendants.

Office Supreme Court, U.S.
FILED.
MAR 21 1892
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

October Term, 1891.

No. 21. B. J. SAGE, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

No. 187. JOHN I. ADAMS & Co., PLAINTIFF IN ERROR,

vs.

THE SAME.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

CASES TRIED TOGETHER.

REPLY TO THE BRIEF OF THE DEFENDANT'S COUNSEL MAINLY ON THE JURISDICTIONAL QUESTION.

Several errors in the Attorney-General's brief require correction. The first one only, is not his.

On page 6, in quoting Halsey's "answer to Int. 3," the date should be "Jan. 7," instead of "June 7." He copied from Record 21, p. 10; and correction can be made, only by reference to the original transcript of Record 187, folio 41. June 7, 1865," was nearly two weeks after the surrender. "Wise's statement of Wells' sugar," must have been before "Feb. 2, 1865," when the bonds were sold. I have Halsey's original memorandum book.

On page 2, he, the counsel, cites article 127 of the constitution of 1868, as declaring the nullity of all contracts with a confederate-currency consideration, including ours. In Delmas *vs.* Ins. Co., 14 Wall., 661, this court declares that very consideration to be valid, and that very article 127 to be unconstitutional. See also 20 Wall., 459.

On same page, articles 119, 129, and 148, *Ibid.* are cited erroneously, because this court long ago, in many cases, settled the federal jurisprudence against the defendant's contention, as to the civil laws, contracts, &c., which were not designed for hostility. See U. S. *vs.* Ins. Co's. 22 Wall., 99; 20 Wall., 459, in which many others are cited. If the Attorney General had read that jurisprudence, with Article 149, of the Constitution of 1868; 21 A., 540; 29 A., 726; 30 A., 891; 35 A., 1026, he could not even have thought of "utter and absolute nullity of the bonds under both state and federal laws." In the last cited case the court below—the one appealed from—held that Louisiana, during the war, "preserved her automony, and possessed a fully organized government;" that "the official acts of civil officers" under said government "are valid and legally binding," and that this "is an unquestioned principle in the law of nations." Moreover, in this last case, the said court holds, through its organ, Judge Todd, that *the presumption of official acts being legal* [*e. g. the sale of our bonds and the entries*] *is only to be overcome by conclusive proof.*

Another mistake (for his argument) consists in his adopting my contention, namely, that "the only question before the court is one of *fundability*, not of *validity*" [his italics]. He might have added to my debt, by saying: "Hence the court below could not touch validity *vel non*, obligation *vel non*, title *vel non*, etc., unless fraud, theft, or error, etc., were pleaded, which, if proved, showed that *no obligation*

or *title* had existed in the given plaintiff. The funding law neither does or can give such jurisdiction. A law doing so would be unconstitutional."

Another mistake is in saying "there is *no contract* between the plaintiffs and the state, under which the *right to fund*," arises, etc., [his italics]. He is misled by Durkee *vs.* Board, 103 U. S., 647, and Guaranty Co. *vs.* Board, 105 U. S., 622. This court, in those cases, holds correctly, that the funding law and remedy did not enter into those previously made contracts. But, *il va sans dire*, that where two competent and willing parties fully agree, and act for years on the agreement, spending time, labor, money, fees, and costs on it, they make a contract containing an *obligation*. We ask federal protection for it, and for those in the bonds; and we claim for all the shield of article I, § 10. I understand this court to hold that we and like parties really have a *funding-law contract* with the state, with many implied obligations. See Louisiana *vs.* Jumel, 107 U. S., 711; Fisk *vs.* Jefferson, 116 U. S., 131. Said the court in the Jumel case: "Whatever may be ordinarily the effect of a promise or a pledge of faith by a state, the language employed in this instance shows unmistakably a design to make these promises and these pledges so far contracts, that their obligation would be protected by the constitution of the United States against impairment."

Another mistake—the last that I can here notice (though there are several more) consists in ignoring the fact that the Durkee and Guaranty Co. cases, have no bearing on ours, because, in both of those, there was a legislative questioning of the bonds, a declaration of their nullity, and a prohibition of their exchange, and thence a judicial questioning for illegality and fraud; while ours were never so "questioned and doubtful," and were only opposed by general denials. Hence nothing was left for us to do, but to comply

with the state's stipulation under *the funding law contract*, and show "valid" bonds, *i. e.*, (1), legal issuance, (2), constitutionality, and (3), valid consideration. We made a conclusive *prima facie* case; it has never been met; and it is grossly unjust to rule our cases by those.

Passing now to a reply, and remarks generally, on jurisdiction, and referring to the argument on Friday, March 4th, I understood his Honor, Judge Harlan, to ask if there was any law passed relating to these *bonds*. As I had just been explaining how the court below construed the funding law as giving it a jurisdiction over the *validity* of the bonds, (even when not questioned for fraud or error), and as I had characterized such construing as construction, in the sense of adding or building on to the law, I mistakenly thought his Honor was inquiring whether the law under which the bonds were issued—namely act 16 of 1864—had been recognized or validated; so I answered that article 149 of the constitution of 1868 had done so, both as to the statute and the contracts under it. [See appendix of brief.] I now regret not amplifying then, my exposure of the lower court's usurpatory construction and enforcement of the law, for it is mainly herein that the need of relief is seen. We ask for protection against *the will of the state*, which is actually shaped and executed as *law* on us. States sometimes pass statute laws, ostensibly constitutional, and thereby, under, construction effect an unconstitutional purpose, doing indirectly what cannot be done directly. A repudiating state fears to pass a law expressly effecting her purpose, and thereby subjecting herself to federal review, correction and defeat; so *she* enacts a liberal and loose statute, and then *she* judicially extends it *ad libitum*. In these cases, the state is the actor; and her *intent*, and her *effected will*, are the wrongs to be redressed. *Her will is law*, whether

legislatively or judicially expressed. She has three organs, or tongues of her sovereignty—three agencies that use or abuse her trusted power, and authoritively *determine her will.* In this case, the judicial agency adds its opinion and construction to the legislative agency's act, and it is through both of them that the wrong is effected. Hence it may be error to hold that to "*pass a law* impairing," &c., in the sense of enacting one, is a condition-precedent to federal jurisdiction; and I submit, deferentially, that to the mental eye, as to these cases, federal article I, § 10, and amendment XIV, read thus: "No state shall *pass*, [*i. e.* make, by or through agents], any law impairing the obligation of contracts;" or "*make or enforce* any law which shall abridge the privileges or immunities of citizens of the United States;" or "deprive any person of property without due process of law;" or "deny to any person within its jurisdiction, the equal protection of its laws." I humbly think the intent of these passages is to prohibit the making and enforcing of state will, (which is law), on these subjects; and that she "makes" (or passes) law, whenever she utters her will, to be put in force.

I beg leave to submit another view. If this court *must* decline to hear this plaint for relief, we face a failure of the constitution, through its authorities, to "establish justice." I submit that the people, by joining themselves in commonwealths, intended and agreed to protect, by united strength of mind and body, their inalienable rights, including property. And those commonwealths, in turn, agreed federally, to protect each and every citizen against the injustice of his own *state of* society; so that the property-element of each bond, *i. e.*, the obligation—if in fact there was one, was federally protected in and throughout all the funding-scheme ordeal, and could not be touched by statal law or jurisdiction. The words "to

establish justice" here mean nothing, if not federal protection to these property rights against statal violation. Have we obligations? Are they impaired by the action of our political society? See Fletcher *vs.* Peck.

THEY ARE PURPOSELY IMPAIRED.

The state's judicial servants, acting on the funding law, namely, act 11 of 1875, and with the jurisdictional power it gives, hold and decree that the obligations of her contracts, which she first induced us to buy, and, afterwards, to offer for exchange for better ones, are not only unfundable but void; and thus the "*law*" impairs, not merely, but destroys the obligations. Now, as to this court's power of revision and remedy, it said, in the Guaranty Co.'s case, 105 U. S., 622: "The question is * * * whether the state's obligation is impaired *by act* 11 *of* 1875, AS THUS CONSTRUED."

And in Williams *vs.* La., 103 U. S., 637, it is said: "This court has jurisdiction to determine whether the amendment, as CONSTRUED by the court below, and *applied* to the facts of the case, impairs the obligation of a contract."

In Delmas *vs.* Ins. Co., 14 Wall., 661, it is said that the answer to the question, whether the decision is in conflict with the federal article I, § 10, "depends solely on the validity of the contract when made; for if valid then, the federal constitution protects it from all subsequent acts of state legislation, whether in the form of constitutional or ordinary legislative enactments." "This court has always jealously asserted the right, when the question before it was the impairing of the obligation of a contract by state legislation, to ascertain for itself whether there was [in point of fact] a contract to be impaired. If it were not so, the constitutional provision could always be evaded

by the state courts giving such construction to the contract, or such decisions concerning its *validity*, as to render the power of this court of no *avail* in upholding it, against unconstitutional state legislation. Bridge Pro. *vs.* Hoboken Co., 1 Wall., 145; Jeff'n Br. B'k *vs.* Skelley, 1 Black, 436."

All these cases seem to convey the opinion, that *the "law,"* statutory or other, *is what the state judicially holds it to be;* and the premonition, that evasion of federal duty, or of federal jurisdiction, will not be federally allowed. Other citations seemingly consonant with the views heretofore given, could, if needed, be produced, but I pass on to show how the fundamental law has been violated in accomplishing this covert repudiation.

THE STATE'S INTENT

was expressed in each bond, to pay Mrs. Wells or bearer $1000 with 6 per cent interest; and thus comply with a sacred obligation and requite a noble benefactress. Intent is the solemn fact and the equally solemn quest of this court, in its judicial endeavor to "establish jnstice" and undo injustice. The presumption that this intent continues, can only be overthrown by "*conclusive evidence.*" 35 La. An., 1026, heretofore cited.

The Wells bonds, then, each and all of them contain the state's intent to obligate herself—*i. e.* contains *her obligation* in each to pay $1000 with interest. Presumptively, that obligation is intact and sacred today. The bonds, the signatures, the seal, the face-recital, the law, and the entries, make complete and decisive proof, which I will say, *en passant*, was never legally questioned. And that *obligation*, of which the bond is the evidential form, was always protected by federal article I, § 10, and was *never under* the funding law. Let us now note the state's repudiation.

as found in the judgments, under review. In the Sage case, the court makes a complete and forcible statement of the pleadings on both sides, but omits—strange to say—exchange and sugar, probably because neither had been pleaded. The court then says: "The parties fully put at issue the *validity* of the bonds, and the *right* to have them funded, as * * * a valid debt of the state," and "*the right to recover* on them, or *enforce* their liquidation or *payment*." The court then alleges the plaintiff's "judicial admission," and moreover, his proof, by his own witnesses, that *the "alleged purchaser" "did not purchase, but exchanged the property for the bonds."* Hence, says the court, having bartered the bonds for goods, the Governor's "act, in contravention of law in this regard," was "void." Being thus acquired, "a subsequent recognition of the holder's right," by paying interest, or by registration, by the Treasurer and Auditor, "could not cure the radical defect of title, or bind the state. * * * *For these reasons*, the judgment of the lower court is affirmed."

The *intent*, then, was to decide that there is *no validity; i. e.. no obligation* in the bonds, and that the state is not bound by them; and, besides, that there is a radical defect in the title.

And, in stating the issues presented to it, the court, *ipso facto*, stated its duty, and its *intent* to be to pass judgment on them; and the meaning and effect of that judgment, if read in the light of the reasons given, are plainly *the nullity* of the bonds. This, therefore, is the plain English of the opinion and judgment in Adams & Co.'s case: We, in the year 1885, decreed in the Sage case, that *all the Wells bonds were bartered, and therefore null;* and we shall apply this judgment to all that series; for we hold "*the equitable pur-*

pose of the law" to be, "that the rights of all holders of the same issue, shall be settled by one decision." Therefore, *our adjudging nullity on one Wells bond, nullifies all of that series;* and we now here apply that holding and decree as *res judicata* to the Adams & Co. case. They now have no right to a trial on their own bonds and cause of action; no right to their own pleadings, issues, and evidence; and no right to their own day in court, or their own judgment and execution. All these matters were settled against them in the Sage case.

Against this gross injustice, Adams & Co. protest, saying: We owned and sued on bonds that were never in the Sage suit—bonds differing from his; and since that suit, we have found decisive proof, (which the state had concealed, or lost, or denied to exist, or could not furnish to us), that the basis of that case was entirely untrue; that the theory of exchange was alike false and impossible; [see brief, pp. 24–30], and that the truth is exactly the reverse of what the court in the Sage case, held to have been established. [See Rec. 187, p. 11.] And what is worse, the court itself says Adams & Co. pleaded sale, and "omitted" exchange, and that on the contrary, Sage pleaded exchange and proved it. Applying the Sage case fatally to ours, then, seems worse than mockery. He and we are in no wise identical; our bonds are not the same; we had no interest in his case, or privity, and no knowledge of it; indeed all four of the identities are absent; and, finally, the plea of *res judicata* is utterly false, as are all its averments. [See Brief, pp. 30 *et seq.*] This is but a reiteration of what is fully demonstrated in my brief. Why did the Attorney-General not reply to what so vitally and fatally affects the Adams & Co. judgment?

But what is still worse, and, I think, unparalleled in American jurisprudence, is that the court, *after*

declining to decide the plea of *res judicata*, and, of course, after passing to the merits, invented a second plea, and actually based its judgment on this judge-made pleading. Nay more, *when holding, that one judgment is enough for all Wells bondholders, it applied its improvised "thing adjudged" to* Adams & Co.'s suit. All this was in my brief. Now, why when these plaintiffs here demand federal remedy against statal wrong, does the state's representative make no reply? Relief is prayed for against the very invented "thing" on which the Adams judgment is based;" against *the state's "deprival" of "property" "without due process of law;"* against *its "making and enforcing a law" "abridging [their] privileges and immunities;"* and against *its denial to them of "the equal protection of its laws" and remedies.* "Due process of law," says Myer, Vested Rights, 234, "implies the right * * * to be heard, by testimony or otherwise, and of controverting by proof every material fact" affecting the question involved. "If any question of fact be conclusively presumed against him, this is not 'due process of law.'" See also, *ibid* 233. "Every man is entitled to his day in court, before his rights can be finally disposed of." And if he has been deprived of this day, for his own cause, he is "deprived of his vested right," without due process of law," and is entitled to federal protection and remedy.

The counsel should moreover have explained how *omission*, by an auditng agent of the state, and *non-action*, by the legislative agency, could affect, impairingly or destructively, titles, grants, or obligations, made by the state 10 or 20 years before, in her executed contracts. His "reasons" might excel the court's. Perhaps he sees, that if the writing we hold, contain no obligation, we have no case, while, if it *do* contain one, the whole federation, or union, or nation guaran-

tees it against statal touch; and he probably sees too, that so-called construction of a statal statute cannot make constitutional, an unconstitutional wrong; that 30 An., 980, has no bearing; and that this court holds that it is not its practice to follow the state courts, where their construction of local statutes violates *"the fundamental principles of justice, and common right."*

I regret, too, that the counsel did not discuss the fact that the decree of the original invalidity of the bonds in the Sage case, makes *res judicata* as to any suit on them against the state hereafter. The obligation cannot be held unimpaired, because the court held that they were bartered instead of sold, and were, therefore, null *ab origine*. And this judgment as to *validity* and not fundability was applied to the Adams' case, where sale was pleaded and fully proved. See "Rehearing refused" [Rec. 21, p. 20.]

On page 6, of the Attorney General's brief, he says "the plaintiffs' position is ungrateful," because of the court's "declining to discuss very serious questions, which involved the utter and absolute nullity of their bonds." He then quoted half a page from Halsey, to prove the court to be right, "under both state and federal laws, to decline any recognition of those obligations." Not a word of it, or even of the record, has any such effect, or even tendency.

The besom of assertion sweeps clean. The sweeper is always "without the shadow of a doubt," that his adversary's bonds were "unquestionably exchanged," and that their "*nullity*" is "*utter and absolute.*" Facts, even if useful, are not needed. "*Sic volo*," &c., does the work. A good specimen of this bad practice comes in right here. The present counsel says nothing of the duly made official entries of the sale of the bonds; but the former counsel, without a word of plea, or hint of evidence, asserted that they were "un-

equivocally false," and the court echoed, that they were "*merely formal*," and made to suit "*the state's method of book-keeping*." Both meant false entries. But such ejaculations, in the heat of fight, are generally absurd. Ex-Governor Allen, *et alii*, entered in the state books $184,000, as being in the Treasury, when it was not there; and thus insured impeachment for embezzling; suit for $184,000; extrusion from office, and everlasting ignominy as knaves and fools. As, in the same brief, "Confeds" were said to be "worthless," the devil, while fishing for men, caught Allen *et als.*, as Dow said the Old Boy did the swearer—with a naked hook!

In beginning the Adams & Co. opinion, the court, by "statements grouped together," from Mr. Sage's testimony, makes an erroneous impression, namely, that he is "the common agent of all the owners" to "prosecute their claims against the state;" and that, as such, he brought the Sage suit. The obvious purpose was to make the Sage judgment *res judicata* on all the Wells bonds. Indeed the court asserts that Mrs. Wells was a party, with Mr. Sage, to that suit. and that Adams & Co. held their bonds from "these parties;" and that, therefore, they are bound by the judgment against Sage, both propositions being demonstrated in the Brief [p. 36] to be *wholly unfounded*. The testimony [Rec. 187, p. 6,] shows that Mr. Sage *did not* represent the transferrees of the bonds, except "to settle with the state," when she should choose to "make proper terms"—the right to do so being reserved. The court copied the Wells' authority to assign the bonds, and used it, but omitted and ignored the date, namely, April 12, 1880. [See Rec. 187, pp. 19 and 10.] This date shows that Mr. Sage had the power and duty to assign bonds for a year before April 6, 1881, when he filed suit; and, taken with Levy's receipt, [p. 13,] Sage's testimony,

[p. 6,] and that of Gen. Wells, [Rec. 21, 56,] it indicated that some bonds—perhaps many—were transferred by Mrs. Wells before said suit.

Now suppose that Mrs. Wells, before that suit, had assigned many, now held—say, some in Europe, some in New Jersey, others by widows and orphans, and small lots by various parties—all of which is true—where can the law or justice be, of applying the Sage *res judicata* to them?

All the persons connected with these transactions, on both sides, have been of the highest character; and all the facts of both records indicate honesty, fairness and *bona fides*.

If the state now hold the bonds to be null, she convicts herself, and Governor Allen and his colleagues, of obtaining goods under false pretenses. It is, however, not the state herself, but her agents, that essay the wrong. Her intent was to make valid obligations and pay them. I believe her intent to continue.

Settlement has constantly been asked for, and equity as constantly tendered.

Courts sometimes aid fiscal policy. Chase, C. J., said in Shortridge *vs.* Mason: "Courts have no policy; they declare the law!" a motto which should be over every judgment-seat in the land.

B. J. Sage,
Counsel.

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with the state's stipulation under *the funding law contract*, and show "valid" bonds, *i. e.*, (1), legal issuance, (2), constitutionality, and (3), valid consideration. We made a conclusive *prima facie* case; it has never been met; and it is grossly unjust to rule our cases by those.

Passing now to a reply, and remarks generally, on jurisdiction, and referring to the argument on Friday, March 4th, I understood his Honor, Judge Harlan, to ask if there was any law passed relating to these *bonds*. As I had just been explaining how the court below construed the funding law as giving it a jurisdiction over the *validity* of the bonds, (even when not questioned for fraud or error), and as I had characterized such construing as construction, in the sense of adding or building on to the law, I mistakenly thought his Honor was inquiring whether the law under which the bonds were issued—namely act 16 of 1864—had been recognized or validated; so I answered that article 149 of the constitution of 1868 had done so, both as to the statute and the contracts under it. [See appendix of brief.] I now regret not amplifying then, my exposure of the lower court's usurpatory construction and enforcement of the law, for it is mainly herein that the need of relief is seen. We ask for protection against *the will of the state*, which is actually shaped and executed as *law* on us. States sometimes pass statute laws, ostensibly constitutional, and thereby, under, construction effect an unconstitutional purpose, doing indirectly what cannot be done directly. A repudiating state fears to pass a law expressly effecting her purpose, and thereby subjecting herself to federal review, correction and defeat; so *she* enacts a liberal and loose statute, and then *she* judicially extends it *ad libitum*. In these cases, the state is the actor; and her *intent*, and her *effected will*, are the wrongs to be redressed. *Her will is law*, whether

legislatively or judicially expressed. She has three organs, or tongues of her sovereignty—three agencies that use or abuse her trusted power, and authoritively *determine her will.* In this case, the judicial agency adds its opinion and construction to the legislative agency's act, and it is through both of them that the wrong is effected. Hence it may be error to hold that to "*pass a law* impairing," &c., in the sense of enacting one, is a condition-precedent to federal jurisdiction; and I submit, deferentially, that to the mental eye, as to these cases, federal article I, § 10, and amendment XIV, read thus: "No state shall *pass*, [*i. e.* make, by or through agents], any law impairing the obligation of contracts;" or "*make or enforce* any law which shall abridge the privileges or immunities of citizens of the United States;" or "deprive any person of property without due process of law;" or "deny to any person within its jurisdiction, the equal protection of its laws." I humbly think the intent of these passages is to prohibit the making and enforcing of state will, (which is law), on these subjects; and that she "makes" (or passes) law, whenever she utters her will, to be put in force.

I beg leave to submit another view. If this court *must* decline to hear this plaint for relief, we face a failure of the constitution, through its authorities, to "establish justice." I submit that the people, by joining themselves in commonwealths, intended and agreed to protect, by united strength of mind and body, their inalienable rights, including property. And those commonwealths, in turn, agreed federally, to protect each and every citizen against the injustice of his own *state of* society; so that the property-element of each bond, *i. e.*, the obligation—if in fact there was one, was federally protected in and throughout all the funding-scheme ordeal; and could not be touched by statal law or jurisdiction. The words "to

establish justice" here mean nothing, if not federal protection to these property rights against statal violation. Have we obligations? Are they impaired by the action of our political society? See Fletcher *vs.* Peck.

THEY ARE PURPOSELY IMPAIRED.

The state's judicial servants, acting on the funding law, namely, act 11 of 1875, and with the jurisdictional power it gives, hold and decree that the obligations of her contracts, which she first induced us to buy, and, afterwards, to offer for exchange for better ones, are not only unfundable but void; and thus the "*law*" impairs, not merely, but destroys the obligations. Now, as to this court's power of revision and remedy, it said, in the Guaranty Co.'s case, 105 U. S., 622: "The question is * * * whether the state's obligation is impaired *by act* 11 *of* 1875, AS THUS CONSTRUED."

And in Williams *vs.* La., 103 U. S., 637, it is said: "This court has jurisdiction to determine whether the amendment, as CONSTRUED by the court below, and *applied* to the facts of the case, impairs the obligation of a contract."

In Delmas *vs.* Ins. Co., 14 Wall., 661, it is said that the answer to the question, whether the decision is in conflict with the federal article I, § 10, "depends solely on the validity of the contract when made; for if valid then, the federal constitution protects it from all subsequent acts of state legislation, whether in the form of constitutional or ordinary legislative enactments." "This court has always jealously asserted the right, when the question before it was the impairing of the obligation of a contract by state legislation, to ascertain for itself whether there was [in point of fact] a contract to be impaired. If it were not so, the constitutional provision could always be evaded

by the state courts giving such construction to the contract, or such decisions concerning its *validity*, as to render the power of this court of no *avail* in upholding it, against unconstitutional state legislation. Bridge Pro. *vs.* Hoboken Co., 1 Wall., 145; Jeff'n Br. B'k *vs.* Skelley, 1 Black, 436."

All these cases seem to convey the opinion, that *the "law,"* statutory or other, *is what the state judicially holds it to be;* and the premonition, that evasion of federal duty, or of federal jurisdiction, will not be federally allowed. Other citations seemingly consonant with the views heretofore given, could, if needed, be produced, but I pass on to show how the fundamental law has been violated in accomplishing this covert repudiation.

The State's Intent

was expressed in each bond, to pay Mrs. Wells or bearer $1000 with 6 per cent interest; and thus comply with a sacred obligation and requite a noble benefactress. Intent is the solemn fact and the equally solemn quest of this court, in its judicial endeavor to "establish justice" and undo injustice. The presumption that this intent continues, can only be overthrown by "*conclusive evidence.*" 35 La. An., 1026, heretofore cited.

The Wells bonds, then, each and all of them contain the state's intent to obligate herself—*i. e.* contains *her obligation* in each to pay $1000 with interest. Presumptively, that obligation is intact and sacred today. The bonds, the signatures, the seal, the face-recital, the law, and the entries, make complete and decisive proof, which I will say, *en passant*, was never legally questioned. And that *obligation*, of which the bond is the evidential form, was always protected by federal article I, § 10, and was *never under* the funding law. Let us now note the state's repudiation.

as found in the judgments, under review. In the Sage case, the court makes a complete and forcible statement of the pleadings on both sides, but omits—strange to say—exchange and sugar, probably because neither had been pleaded. The court then says: "The parties fully put at issue the *validity* of the bonds, and the *right* to have them funded, as * * * a valid debt of the state," and "*the right to recover* on them, or *enforce* their liquidation or *payment*." The court then alleges the plaintiff's "judicial admission," and moreover, his proof, by his own witnesses, that *the "alleged purchaser" "did not purchase, but exchanged the property for the bonds*." Hence, says the court, having bartered the bonds for goods, the Governor's "act, in contravention of law in this regard," was "void." Being thus acquired, "a subsequent recognition of the holder's right," by paying interest, or by registration, by the Treasurer and Auditor, "could not cure the radical defect of title, or bind the state. * * * *For these reasons*, the judgment of the lower court is affirmed."

The *intent*, then, was to decide that there is *no validity; i. e.. no obligation* in the bonds, and that the state is not bound by them; and, besides, that there is a radical defect in the title.

And, in stating the issues presented to it, the court, *ipso facto*, stated its duty, and its *intent* to be to pass judgment on them; and the meaning and effect of that judgment, if read in the light of the reasons given, are plainly *the nullity* of the bonds. This, therefore, is the plain English of the opinion and judgment in Adams & Co.'s case: We, in the year 1885, decreed in the Sage case, that *all the Wells bonds were bartered, and therefore null;* and we shall apply this judgment to all that series; for we hold "*the equitable pur-*

pose of the law " to be, " that the rights of all holders of the same issue, shall be settled by one decision." Therefore, *our adjudging nullity on one Wells bond, nullifies all of that series;* and we now here apply that holding and decree as *res judicata* to the Adams & Co. case. They now have no right to a trial on their own bonds and cause of action; no right to their own pleadings, issues, and evidence; and no right to their own day in court, or their own judgment and execution. All these matters were settled against them in the Sage case.

Against this gross injustice, Adams & Co. protest, saying: We owned and sued on bonds that were never in the Sage suit—bonds differing from his; and since that suit, we have found decisive proof, (which the state had concealed, or lost, or denied to exist, or could not furnish to us), that the basis of that case was entirely untrue; that the theory of exchange was alike false and impossible; [see brief, pp. 24–30], and that the truth is exactly the reverse of what the court in the Sage case, held to have been established. [See Rec. 187, p. 11.] And what is worse, the court itself says Adams & Co. pleaded sale, and "omitted" exchange, and that on the contrary, Sage pleaded exchange and proved it. Applying the Sage case fatally to ours, then, seems worse than mockery. He and we are in no wise identical; our bonds are not the same; we had no interest in his case, or privity, and no knowledge of it; indeed all four of the identities are absent; and, finally, the plea of *res judicata* is utterly false, as are all its averments. [See Brief, pp. 30 *et seq.*] This is but a reiteration of what is fully demonstrated in my brief. Why did the Attorney-General not reply to what so vitally and fatally affects the Adams & Co. judgment?

But what is still worse, and, I think, unparalleled in American jurisprudence, is that the court, *after*

declining to decide the plea of *res judicata*, and, of course, after passing to the merits, invented a second plea, and actually based its judgment on this judge-made pleading. Nay more, *when holding, that one judgment is enough for all Wells bondholders, it applied its improvised "thing adjudged" to* Adams & Co.'s suit. All this was in my brief. Now, why when these plaintiffs here demand federal remedy against statal wrong, does the state's representative make no reply? Relief is prayed for against the very invented "thing" on which the Adams judgment is based;" against *the state's "deprival" of "property" "without due process of law;"* against *its "making and enforcing a law" "abridging* [*their*] *privileges and immunities;"* and against *its denial to them of "the equal protection of its laws" and remedies.* "Due process of law," says Myer, Vested Rights, 234, "implies the right * * * to be heard, by testimony or otherwise, and of controverting by proof every material fact" affecting the question involved. "If any question of fact be conclusively presumed against him, this is not 'due process of law."' See also, *ibid* 233. "Every man is entitled to his day in court, before his rights can be finally disposed of." And if he has been deprived of this day, for his own cause, he is "deprived of his vested right," without due process of law," and is entitled to federal protection and remedy.

The counsel should moreover have explained how *omission*, by an auditng agent of the state, and *non-action*, by the legislative agency, could affect, impairingly or destructively, titles, grants, or obligations, made by the state 10 or 20 years before, in her executed contracts. His "reasons" might excel the court's. Perhaps he sees, that if the writing we hold, contain no obligation, we have no case, while, if it *do* contain one, the whole federation, or union, or nation guaran-

tees it against statal touch; and he probably sees too, that so-called construction of a statal statute cannot make constitutional, an unconstitutional wrong; that 30 An., 980, has no bearing; and that this court holds that it is not its practice to follow the state courts, where their construction of local statutes violates *"the fundamental principles of justice, and common right."*

I regret, too, that the counsel did not discuss the fact that the decree of the original invalidity of the bonds in the Sage case, makes *res judicata* as to any suit on them against the state hereafter. The obligation cannot be held unimpaired, because the court held that they were bartered instead of sold, and were, therefore, null *ab origine*. And this judgment as to *validity* and not fundability was applied to the Adams' case, where sale was pleaded and fully proved. See "Rehearing refused" [Rec. 21, p. 20.]

On page 6, of the Attorney General's brief, he says "the plaintiffs' position is ungrateful," because of the court's "declining to discuss very serious questions, which involved the utter and absolute nullity of their bonds." He then quoted half a page from Halsey, to prove the court to be right, "under both state and federal laws, to decline any recognition of those obligations." Not a word of it, or even of the record, has any such effect, or even tendency.

The besom of assertion sweeps clean. The sweeper is always "without the shadow of a doubt," that his adversary's bonds were "unquestionably exchanged," and that their *"nullity"* is *"utter and absolute."* Facts, even if useful, are not needed. *"Sic volo,"* &c., does the work. A good specimen of this bad practice comes in right here. The present counsel says nothing of the duly made official entries of the sale of the bonds; but the former counsel, without a word of plea, or hint of evidence, asserted that they were "un-

equivocally false," and the court echoed, that they were "*merely formal*," and made to suit "*the state's method of book-keeping.*" Both meant false entries. But such ejaculations, in the heat of fight, are generally absurd. Ex-Governor Allen, *et alii*, entered in the state books $184,000, as being in the Treasury, when it was not there; and thus insured impeachment for embezzling; suit for $184,000; extrusion from office, and everlasting ignominy as knaves and fools. As, in the same brief, "Confeds" were said to be "worthless," the devil, while fishing for men, caught Allen *et als.*, as Dow said the Old Boy did the swearer—with a naked hook!

In beginning the Adams & Co. opinion, the court, by "statements grouped together," from Mr. Sage's testimony, makes an erroneous impression, namely, that he is "the common agent of all the owners" to "prosecute their claims against the state;" and that, as such, he brought the Sage suit. The obvious purpose was to make the Sage judgment *res judicata* on all the Wells bonds. Indeed the court asserts that Mrs. Wells was a party, with Mr. Sage, to that suit. and that Adams & Co. held their bonds from "these parties;" and that, therefore, they are bound by the judgment against Sage, both propositions being demonstrated in the Brief [p. 36] to be *wholly unfounded*. The testimony [Rec. 187, p. 6,] shows that Mr. Sage *did not* represent the transferrees of the bonds, except "to settle with the state," when she should choose to "make proper terms"—the right to do so being reserved. The court copied the Wells' authority to assign the bonds, and used it, but omitted and ignored the date, namely, April 12, 1880. [See Rec. 187, pp. 19 and 10.] This date shows that Mr. Sage had the power and duty to assign bonds for a year before April 6, 1881, when he filed suit; and, taken with Levy's receipt, [p. 13,] Sage's testimony,

[p. 6,] and that of Gen. Wells, [Rec. 21, 56,] it indicated that some bonds—perhaps many—were transferred by Mrs. Wells before said suit.

Now suppose that Mrs. Wells, before that suit, had assigned many, now held—say, some in Europe, some in New Jersey, others by widows and orphans, and small lots by various parties—all of which is true—where can the law or justice be, of applying the Sage *res judicata* to them?

All the persons connected with these transactions, on both sides, have been of the highest character; and all the facts of both records indicate honesty, fairness and *bona fides*.

If the state now hold the bonds to be null, she convicts herself, and Governor Allen and his colleagues, of obtaining goods under false pretenses. It is, however, not the state herself, but her agents, that essay the wrong. Her intent was to make valid obligations and pay them. I believe her intent to continue.

Settlement has constantly been asked for, and equity as constantly tendered.

Courts sometimes aid fiscal policy. Chase, C. J., said in Shortridge *vs.* Mason: "Courts have no policy; they declare the law!" a motto which should be over every judgment-seat in the land.

B. J. Sage,
Counsel.

FEB 27
JAMES H. McKE
CL

Supreme Court of the United States.

October Term, 1891.

No. 21. B. J. SAGE, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

No. 187. JOHN I. ADAMS & CO., PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

THE TWO CASES TO BE TRIED TOGETHER UNDER ORDER OF THIS COURT.

BRIEF FOR THE PLAINTIFFS IN ERROR.

These are two suits against the Board of Liquidation of the State of Louisiana, to compel the funding and exchange of the five State bonds in the first and the four in the last, which belong to a series of 184 of $1,000 each, bearing six per cent. interest, made under Act 16 of 1864, and sold by the Governor, Henry W. Allen, at Shreveport, the capital, to General Montfort Wells, the husband and agent of Mrs. Jeannette D. Wells, for $184,000, on February 2, 1865, the sale of the bonds, and the receipt in the treasury of Wells' money for them, and the placing of it in the "general fund," being duly entered on that date in the State's books. The first installment of interest on all the

bonds was then paid, the coupons therefor, being cut off and due entry made. Moreover, on February 11, nine days later, the auditor, as required by Act 26 of 1864, carefully—with all particularity, registered these bonds in the bond book of the State, as appears by the auditor's endorsement on each bond, and his receipt of $184 for his fees. See also Act 26 of 1864, and Wells' testimony. (Rec. 21, p. 5).

Statute 3 of 1874, provides, that the Board of Liquidation, (which the act creates,) shall exchange the consolidated bonds of Louisiana, (also provided for in the act,) for "*all valid outstanding bonds of the State,*" at the rate of $60 for $100, and the amendatory Act, namely, 11 of 1875, requires the State Supreme Court's favorable decision on all bonds that may be objected to, as a condition of fundability, and further requires the plaintiff to affirm and prove three points:

(1). Issuance in strict conformity to law; (2) constitutionality; and (3) a valid consideration.

IN THE FIRST OF THE TWO SUITS—

the Sage Case, No. 21 of this docket—the plaintiff sued the Board, April 6, 1881, and the issues are fully stated by the Supreme Court itself, as follows: (See opinion, record 21, p. 17).

"The petition alleges substantially that the bonds are legal and valid obligations of the State; that they were issued in strict conformity to law; that the original holder acquired them for a valuable consideration; that they were not issued in violation of the State or federal Constitutions, and are in proper form, and, in short, that they come within all the conditions entitling them to be funded or exchanged for consolidated bonds, as provided by Act 3 of 1874."

"The answer of the defendant board is a general denial, also special denials, which together fully put at issue *the validity of the bonds*, and *the right of*

the holder "to have them funded as representing a valid "debt of the state."

The judgment was for the defendant, rejecting the plaintiff's demand. The court did not object to the law, the form of the bonds, or their execution, or the agents disposing of them, but held that *"the validity of the bonds"* was *"fully put at issue"*; that the act of the Governor issuing them was "in contravention of law" and "void"; and that the bonds were invalid, and *were* held with "a radical defect of title," in that they were exchanged for merchandise, instead of sold as the law required, and as the plaintiff alleged.

THE SECOND OF THE TWO SUITS—

that of John I. Adams & Co. *vs.* the Board, No. 187 of this docket was filed on July 5th, 1886; the bonds were alleged therein to have been *sold* by the State to Mrs. J. D. Wells in strict conformity with law, and afterwards validly transferred by her assignee to the plaintiff, and a judgment against the Board, ordering the funding and exchange, was prayed for.

The suit was met by a peremptory exception of *res judicata*, so-called, altogether unfounded in fact, and seemingly intended as a vehicle for illegal testimony or a mere pretext, or aid for repudiation—a conjecture which later became a certainty when no attempt at proof was made, and the plea was never urged or even argued for decision; and no decision was ever made.

As we shall see below, the plea was entirely unfounded in fact, as well as without application, none of the needed identities existing.

And moreover, it was as absurd and contradictory as it was false in fact, so much so, indeed, that the Supreme Court in the Adams case, after reasoning that the plea was tenable, expressly declined deciding it,

but held that under the funding law, a decision of a suit against one bondholder as to funding, bound all (even a thousand) who held bonds of that series or issue. Such decision was not called for by any pleading; no such point was presented or argued, and the court seemed to ignore the federal protections against such wrongs.

The judgment was, virtually, that Adams & Co. could not be heard, because Sage had been heard, *they* being bound by the decision against *him*; so that they and their bonds (entirely different from his) and their peculiar cause of action, and the peculiar issue or issues they presented, were extruded from court without a hearing, the court's show of weighing their evidence, in order to see if a different judgment was due them, only made the wrong inflicted by the adverse and entirely erroneous judgment, the more conspicuous and flagrant.

Assignment of Errors.

I. Error, in the Sage case No. 21, in construing the funding laws of Louisiana, namely, Acts 3 of 1874 and 11 of 1875, to give jurisdiction to the Supreme Court of the State to pass on the "*validity*" of the plaintiff's bonds, and of "the right to recover on them and enforce * * * payment;"—the court's words—as well as on the title to them, and hence decreeing, (on the basis of said funding laws, and the jurisdiction they confer), that said bonds are invalid, and are held with "a radical defect of title," *i. e.*, the State can now recover them; thus "impairing the obligation" which each contract involves, and violating federal article I, §10.

II. Error, in applying the judgment of the Sage case No. 21, involving both of the above errors, as *res*

judicata to the suit of Adams & Co., No. 187, with fatal effect on their bonds, their title thereto, and their right of action thereon, thus (1) impairing the obligations of their contracts, and violating federal article I, §10; (2) depriving them of their property "without due process of law," to wit: depriving them of their bonds, of their right of action thereon, of their own testimonies—including their new found instruments of vital evidence, of their day in court, their own trial and their own judgment—all in violation of federal amendment XIV, which prohibits a State from depriving any person of property "without due process of law;" and (3) denying by this judicial action, to these persons "within its jurisdiction, the equal protection of its laws"—thus again violating Amendment XIV.

III. Error, in not recognizing the fact, that by accepting the funding proposal, and tendering his bonds, each of these suitors made with the State a new contract, protected by federal article I, §10, and Amendment XIV, under which a second right to all extant remedies—(including those of the funding laws), on all his bonds, enured to him; and that one of the State's obligations in the new contract, was her promise to fund and exchange his bonds, if, *in fact*, they are "*valid* outstanding bonds of the State," as they are conclusively proved to be; and, finally, that the protection of each obligation from impairment, and of his "due process" on his own bonds, as well as of his equality under the laws, were among the rights thus again recognized. [see Louisiana *vs.* Jumel, 107 U. S., 711.]

IV. Error, in not recognizing and holding that under the new contract, made by each holder, who accepts the terms and tenders his bonds, she promised to fund and exchange "*all* valid outstanding bonds of the

State," including his, whether the Auditor knows of, and *reports* them or not, or the Legislature *contemplated* them or not—at least this is a presumption, requiring a legislative expression or "conclusive evidence" to overcome it.

V. Error, in not recognizing or holding that the law making power alone, can, of right, make exceptions or provisoes to laws; and that it is presumptuous and unconstitutional for an Auditor, or even the legislative servants, to hold that their omission of duty, or want of knowledge, nullifies the sacred promises or obligations of the State, previously existing, as grants or vested rights, and included in the unqualified and superlative word, "all." The law declares that "*all*" "*valid* bonds" that are offered on its terms, "*shall*," by the said law's servants, be accepted, and funded, and exchanged.

VI. Error, in not recognizing, passing on, and defining the phrase, "questioned and doubtful," and its legal consequences, in the execution of the funding laws; and holding that, in proper forensic practice, the plaintiff who must—at the outset—make out a *prima facie* case, should be and has a right to be, premonished, by pleas, of the objections that cause his bonds to be assailed as "questioned and doubtful," such as fraud, mistake, theft, false entries, or other special ones, which show a want of the State's intent. In the Guaranty & I. Co. *vs.* The Board, 105 U. S., 622; in Durkee *vs.* The Board, 103 U. S., 646, and in many other cases, the "questioning" was set up, and the frauds and violations of law fully proved.

ON THE MERITS.

VII. Error, in not giving due weight to the presumption from Act 16 of 1864, and from the entries in the

State books, that these bonds were lawfully sold to Wells; error in using oral evidence to attack collaterally the sworn official entries of sale of the bonds; error in not taking all the evidence together and deducing therefrom a correct conclusion of sale, and, finally, error is not discovering that the witnesses' statement of a direct and technical exchange of bonds for sugar was wholly unfounded.

VIII. Error, in admitting in the Adams case, illegal oral evidence, which was foisted into the case, under an unfounded peremptory exception of *res judicata*; and using that evidence as a substitute for, or a contradiction of those "*depositories and memorials of truth*," always heretofore held by the law to be not subject to oral contradiction, altering, or varying.

IX. Error, in deciding that the evidence of Wise, Halsey and Wells, taken only in the Sage case, was admissible in the Adams case on either *res judicata* or merits, against the objections of irrelevancy, and *res inter alios acta*, [Rec. 187, p. 15, at bottom.] The only plausible ground of admission was to show the identities, and to prove the issues to be the same—these being fully proved already by the mere record.

X. Error, in permitting the unfounded and untrue exception of *res judicata* to stand undecided for such uses as were made of it, as indicated in the Adams Record 187.

XI. Error, in virtually holding that under the funding laws, 184 bonds, bought in open market by 184 holders, if of the same issue, will be annulled by a *res judicata* against one holder, [See Rec. 187, p. 21.]

XII. Error, in holding that the omission of these bonds by the Auditor from his report, or the non-contemplation of them by the legislature, affects title or

fundability, when they are included within the description of those entitled to be funded.

ARGUMENT.

In presenting the consolidated cases, the suit of Adams & Co., *vs.* the board, No. 187, will be made more prominent in the earlier stages of the discussion, because of its superior importance, and of its more fully and fairly presenting the federal questions, and the evidence and merits of this great controversy.

On February 2, 1865, the State of Lousiana, acting through her Governor, and in strict conformity to law, sold and delivered 184 state bonds of $1,000 each, bearing 6 per cent interest, and payable in 20 and 25 years to Mrs. J. D. Wells. The good faith of the transaciion, a part of which was the sale of these bonds, as will be seen, was never questioned, and the consideration was never denied, but was confessed by the state courts, though misstated, as will appear. John I. Adams & Co., acquired four of them, numbered 101 to 104 inclusive, in regular business, before maturity, and free of equities. They, in 1886, sued the state Board of Liquidation to have them funded and exchanged for consolidated bonds, under Act 3 of 1874, which commanded the said funding board to exchange the said consols for "*all valid outstanding bonds of the State*," and set forth in their petition their bonds, their ownership; the issuance of them by sale to Montfort Wells, in strict conformity to law; their constitutionality. the valid consideration given; and the board's refusal to fund and exchange; and prayed for judgment against the board, ordering the funding and exchange.

In reply, the Board first pleaded the judgment in the Sage case, No. 21, as *res judicata*, averring that the bonds sued on in this case and those in the Sage

case were identical; that they belonged to Montfort Wells or his family, and did not belong to those plaintiffs; that Adams & Co. were parties without interest interposed to avoid *res judicata*; that the *object*, the *cause of action*, the *parties* in interest and their *qualities* were the same in both cases; and finally, that the judgment in the Sage case was good against all the world, including Adams & Co., (Rec. 187, p. 3). As this plea had no basis, and was never decided, even the Supreme Court *expressly* declining decision, it must be considered as cumulated with the answer in the case, (Id.), which is a general denial, with the following special ones, namely: that these bonds were not reported by the Auditor to the Legislature in 1874, and hence were not contemplated in the funding scheme; that they were intended to violate the federal Constitution, and aid the Confederacy on the war; that articles 119 and 129 of the State Constitution of 1868, forbids their payment; that if sold for Confederate money, Article 127 does the same; and finally, that they were not legal, because issued in exchange for goods and not sold, and because not issued for a valid consideration.

I. Description of the Adams & Co. Bonds.

In each of them, Louisiana acknowledges indebtedness of $1,000, and promises to pay it in twenty years from the date, viz.: August 1, 1864, with interest at six per cent. per annum, payable half yearly at the treasurer's office, and declares, on the face of each, that "this bond is issued by virtue of an Act of the Legislature of the said State, entitled, 'An Act to authorize the sale of bonds for the relief of the Treasury, and final liquidation of the principal and interest thereof,' approved February 8, 1864." Each is signed by the Governor and Secretary of State, and the seal

of Louisiana is affixed. All the "interest warrants in the margin hereof" are signed with the initials of the Treasurer, and are all yet attached to the bond but one, which the State cut off and paid, February 2, 1865, the day the bonds were sold, (Rec. 187, p. 4).

On the back of each bond is the following certificate of Registry, "Auditor's office, Shreveport, February 11, 1865. This bond is the property of M. Wells, and is transferable only upon his endorsement hereon, H. Peralta, State Auditor."

The four bonds in the suit are properly endorsed.

II. The Law Which Authorizes the Bonds.

Act No. 16 of 1864, "to authorize the sale of bonds for the relief of the Treasury, and final liquidation of the principal and interest thereof," provides for the engraving and printing of six per cent. bonds to an amount of $10,000,000, to be payable to bearer in twenty to forty years, to be for not less than $200 nor more than $1,000 in amounts, to be signed by the Governor and Secretary of State, and the coupons by the Treasurer, the State seal to be affixed, and all to be numbered and registered in the Auditor's office.

Section 4 reads as follows: "That said bonds shall be sold by the Governor for the benefit of the State, or shall be exchanged for any of the Treasury notes, Confederate or State, but shall not be sold or exchanged for less than par, nor in greater amounts than the exigencies of the Treasury may require."

Section 5 provides, "that so far as the Governor shall sell or exchange the bonds and receive money, Confederate or State Treasury notes, therefor, he shall cause to be cancelled an equal amount of State Treasury notes, then in the Treasury, equal to the amount

realized from the sale or exchange of the said bonds, and shall cause the proper entries to be made in the Auditor's and Treasurer's books."

Section 6 provides for a sinking fund, for the interest of the bonds, and for the principal as they mature, and a pledge of 33⅓ per cent. of all taxes, to be held sacred for the payment of it; and Section 7 "appropriates $600,000, or as much as is needed, for the first interest.

The remaining sections are not needed. The Louisiana Statutes of 1864 will be handed to the court.

The interest on the 184 bonds, including those in suit, was paid, out of the above appropriation, to General Wells on February 2, 1865.

III. THE BONDS WERE SOLD AS THE LAW REQUIRED; and the entries of sale, expressly commanded by law were duly made in the Auditor's and Treasurer's books. They are in the case without objection and are *conclusive*. I will number them for reference.

1. "State of Louisiana, Auditor's office, May 31, 1886. This is to certify that in the book in this office, marked 'Journal 1863–1865,' under the heading of 'Receipts,' is the following entry: 'sales of six per cent. bonds under Act No. 16 of 1864. February 2, 1865, (16) order to Montfort Wells for purchase of 184 six per cent. bonds, of $1,000 each, issued under Act No. 16 of 1864, $184,000.' Given under my signature and seal of office, this, the 31st of May, 1886. O. B. Steele, Auditor." (Rec. 187, p. 11).

Wells' money was then in the Treasury.

2. "State of Louisiana, Auditor's office, Baton Rouge, May 31, 1886. This is to certify, that in the book of this office, marked 'Receipt Ledger,' years 1860–1–2–3 and 4, p. 257, is the following heading: 'Proceeds of sales of six per cent. bonds, issued under Act No. 16 of 1864,' and the following entry: 'February 2, 1865, (16) order to Montfort Wells for the purchase of 184

six per cent. bonds of $1,000 each, issued under Act No. 16 of 1864, $184,000,'" (Id.)

3. In the same certificate is the following: "And I further certify, that in the book of this office, marked 'Fund Book,' year 1862–3–4 and 5, is the following entry, p. 102: 'Dr. General Fund, February 2, 1865, (16) $184,000.' Given under my signature and seal of office, this, the 31st day of May, 1886, O. B. Steele, Auditor, (Id).

4. The following entry is certified by the same official, same date, from the "Journal of Expenditures," years 1863–4 and 5, "February 2, 1865, (100) interest on bonds, issued under Act No. 16 of 1864, warrant to Montfort Wells, per H. M. Wright, in payment of 184 coupons of interest of $30 each, due 1st February, 1865, on State bonds issued under Act 16 of 1864, $5,520." (Id).

5. The entry corresponding with the above in the record, is taken from the Auditor's "Appropriation Book," p. 295, and is certified by him. (See Rec. 187, pp. 11, *et seq*, for all these entries).*

*NOTE—As the following entries are public facts in the War Office Records, I venture to note them here, because of the following from Greenleaf (Ev. I, §§ 6 and 6a). " * * * And the United States Supreme Court resorted to the archives and public record books of the United States, to inform themselves of particular facts material to be known, to the proper understanding of a cause before it." (1 Wall, 721, Nelson J. in U. S. *vs* Teschmaker, 22 How., 405."

In War Department Records, "Archive office, Chap. VIII, No. 114," in book marked "*Journal*" "Louisiana Treasurers Office," under the head of "Receipts," at p. 184, is the following: "Date, 1865, February 1, Auditor's No. of order, 16, by whom paid, Montfort Wells. On what account, sale of 6% Louisiana State Bonds, Act No. 16 of 1864. Treasurer's No. of order, 15. Observations, G. F., amount, $184,000.00."

The following is in the same records of same office, Chap. VIII, No. 123, in book, marked "Treasurers office, Louisiana," "*Receipts,*" at p. 252, under heading of "Sales of 6% state bonds under act No. 16, of 1864," is the following entry: "1865, February 2, No. 16, Montfort Wells. Proceeds of sales of 6% bonds, No. 15, $184,000.00.

The following is in the same records and office, Chap. VIII, Vol. 117" in book marked "*Fund Book*" Treasurer's office, Louisiana," at p. 358, under heading of "General Fund," is the following entry, "1865, February 2, Order No. 16, $184,000."

The following is from the same office and records and from the book marked "Journal," under the heading of "Expenditures." "Date February 4, 1865, Auditor's No. of Warrant. 100, to whom paid, Montfort Wells, on what account, interest on Louisiana State bonds. Treasurer's No. of Warrant, 99. Observations, G. F., amount, $5,520.

The above are all in the Adams case, being adduced as decisive proof of sale; but only the following mutilated or garbled version of No. 2 was adduced in the Sage suit; and it was the only direct evidence of sale therein. I will present it here in the certificate of the Auditor, found on page 12 of Record 21 of this docket.

"* * * Auditor's Office, June 11, 1881. I hereby certify the following to be a true and correct extract from the Receipt Ledger of 1860, 1861, 1862, 1863 and 1864. 'February 2, 1865; Order No. 16 to Montfort Wells for purchase of 184, six per cent. bonds of $1,000 each, issued under act No. 16 of 1864.' Allen Jumel, Auditor."

"Purchase" was supposed to be the correlative of sale, and to necessitate that technical thing; but the court held in that case, that the Auditor, in making the entry of sale, (as the law commanded, and he was sworn to do), had blundered in using the word "purchase," through ignorance of what constituted a sale, or rather of the distinction between a sale and an exchange—the court insisting that the bonds were swapped for sugar, and adhering to the obvious error and injustice, after attention was called to the suppressed *heading*, and the *conclusion* of the entry, namely: "*Proceeds of sale*," etc., and "$184,000."

The suppression was not seen till the entry was in evidence—too late for correction. It was the only direct proof of sale, but with the corroboration and legal presumption, it seemed ample. This court must keep it in mind, that the State denied the existence of any entries of sale, when the Sage suit was filed April 6, 1881, and that the one under remark, (garbled probably by mistake), was the only one the plaintiff could then obtain. The others in this record have been gradually unearthed since.

ALL THESE ENTRIES WERE REQUIRED BY LAW—

and the making of them was sworn official duty. Act 16 of 1864, required the Governor to "*cause the proper entries* [of sale and cancellation] *to be made in the Auditor's and Treasurer's books.*"

This court is also earnestly pressed to note that the Supreme Court of Louisiana, not only did not try to get and weigh the discovered entries, to which its attention was invoked, but it never seemed to recognize nor attempt to explain the omissions from the entry under review, of the expressions which made it *absolutely* and *beyond any forensic or judicial calling in question, an* ENTRY OF SALE.

IV. THESE ENTRIES ARE ABSOLUTE PROOF.

Parol testimony can neither impugn them, nor can it be adduced, or even used against them, except in direct attack, based on fraud, mistake, etc.—no hint of which is here. They are not merely presumptively true, only standing till overthrown; but they are absolute, and, in this case, they were sacred rights and shields of rights. Says Starkie, volume 1, p. 587, §648, 9th edition: "It is a general, and *most inflexible rule*, that whenever legal instruments are appointed, either by requirement of law, or by the compact of parties, to be repositories and memorials of truth, any other evidence is *excluded from being used*, either as a substitute for such instruments or to contradict or alter them." He repeats it as follows: "That oral evidence shall, in no case, be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law; * * * or to contradict, alter or vary a written instrument, either appointed by law, or by the compact of private parties to be the appropriate memorial of the particular facts which it recites." (Id., §648).

Says Greenleaf, (Vol. 1, §86) "* * * oral evi-

dence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents, official examinations," etc., etc.

(See also 2 Phillips Evidence, p. 637; Best on Evidence, §226; 2 Wharton Evidence, §920; 2 Taylor Evidence, 960, §1132–3).

(See also Tait Evidence 326–7; 3 Appeal Cases, H. of L.; VanNess *vs.* Mayor, 4 Pet., 232).

All the great writers on evidence agree that parol evidence "*cannot be received* to contradict, vary, add to, or subtract from, the terms of a valid written instrument," and they seem to consider it absurd that what Lord Coke calls" the uncertain testimony of slippery memory" should be substituted for public records, or be allowed, in anywise, to affect them.

Now, as these "repositories and memorials of truth" in the case of Adams & Co., were "not liable to be impeached" by oral testimony, that firm was entitled to a judgment as prayed for, ordering the funding and exchange of their four bonds as "valid outstanding bonds of the State." This will more fully appear, when I reach the "reasons for the judgment."

V. The State's Suppressio Veri Defeated Them—

owing to the advantage of it, given to the court, as will be seen.

Before proceeding to show the baselessness of the *res judicata*, and especially the court's vital error of fact that the bonds were issued for an exchange, which is the sole basis of the said *chose jugee*, it is proper to show this court the State's virtual suppression of her own records, depriving these plaintiffs of the use of them for justice, and baffling the search therefor, when they were vital, as the shields of these citizens' rights.

On the trial of the pretended *res judicata*, when offered as an estoppel in the Adams case, the matter was thus explained in the testimony of the plaintiff in the Sage case.

"The judgment in the case of Sage *vs.* The Board of Liquidation, which is pleaded as *res judicata*, was based on a mistake of fact made by General Wells, which caused error of pleading and evidence in that case. I have no ownership or interest involved in the result of this suit, but I wish to see the error corrected and justice done, according to the evidence recently found in the State records, and I shall bring a new suit on the bonds not yet transferred, as well as others, to show and establish that the error in fact, which caused the decision in Sage *vs.* Board, and this plea, was brought about by the State's own fault or misfortune, amounting to a suppression of records, which conclusively showed that the bonds were issued and sold in strict conformity with the law, and by the authorities entrusted with their issue and delivery. Before pleading in that case, I searched often and earnestly for the needed data, and especially for the entries of the issue and disposal of these bonds, which the law required to be made, and was told at the State Treasurer's and Auditor's Offices that there was no such data. The books from which we now prove the said entries of sale were then in the Auditor's Office and under his control. The judgment pleaded as *res judicata*, is error, based on an alleged state of facts which is untrue and the State is debarred from pleading that [to] which she, through a suppression of truth, contributed." (Rec. 187, p. 9).

I may here, to avoid unnecessary censure, concede that the withholding of the evidence referred to as well as the mutilation of vital instruments at vital junctures, may have been free of evil purpose, though

mischievous in misleading the court to what was in effect the grossest injustice.

VI. The Federal Questions.

These plaintiffs went before the Board of Liquidation and Supreme Court of Louisiana, for the funding and exchange of their respective bonds, with the obligations thereof perfect, and above the jurisdiction with which the funding law endowed the court—obligations, related to the forms containing them, as is the kernel to the shuck, the gold to the ore, the gem to the casket, or the soul to the body; and each bond, if, *in fact*, valid, held a soul and life which could not be touched in any proceeding under the funding laws, for it was all the time under the special protection of the Federal Constitution—article I. § 10, and out of the jurisdiction of the State, except on some legitimate plea, like fraud, mistake, theft, &c., &c., which, if good, shows the bond to be a mere body without soul. In the absence of such plea, validity is the sole condition to funding and exchange.

As there seems no doubt of Federal jurisdiction, I do not cite authorities and argue on it, except incidentally; but try to show violations by the State, and its Supreme Court, through the funding law, and the jurisdiction under it, of the respective rights of both the plaintiffs, which are protected by Federal article, I, § 10, and Amendment XIV.

The court in its opinion in the Sage, case No. 21, states the petition fairly enough, as alleging plaintiff's bonds to be valid; issued in strict conformity to law; constitutional; and for a valid consideration; and properly states the answer; but goes on to say that these pleadings "fully put at issue *the validity of the bonds*," and moreover, "*the right to have them funded.*" I shall contend that under the funding laws, the lat-

ter is a legitimate issue—the former not, except *sub modo.*

Again, the court substantially stated that the Governor's act was "void" in issuing the bonds—for the reasons given—and "*could not confer on any person*" "*the right to recover on them, or enforce their* * * * *payment.*" And the court further substantially held that the bonds, being acquired by Mrs. Wells "in contravention of law," a recognition of them or of their genuineness or validity, by "any of the executive officers," [the court is speaking of the Auditor registering them some time after their issuance; and the Treasurer paying the accrued interest], "*could not cure the radical defect of title, or bind the State* * * * ." The conclusion *i. e.* the decree is, that, "*for these reasons*, the judgment of the lower court is affirmed." (Rec. 21, pp. 17, 19).

All this can only mean that the Supreme Court of Louisiana considered its jurisdiction to extend over "*the validity of the bonds*," which was "*fully put at issue*," and that the Governor's Act was *void*, and caused a "*radical defect of title*" to those held by the plaintiff; and as it is a decision by the State through her legislative and judicial agents, it violates her federal article I, §10, by impairing and even destroying the obligation of the bonds in that case; and moreover, deprives that plaintiff of vested rights without compensation, and "without due process of law." Nay, more, if the plaintiff has "*a radical defect of title*," (as the court says in the last paragraph of its opinion), it follows, that his bonds now belong to the State, and that she can recover them at law.

The court itself states that the parties "*fully put at issue the validity of the bonds;*" this is equal to stating its duty to decide that issue, and every word of its opinions in the two cases, Nos. 21 and 187, makes its aim and *intent* to be manifest; to decide *the issues it*

states, regardless of the federal protection. Fundability *vel non*, obligation *vel non*, validity *vel non*, title *vel non*, are all within the same ingenious disposal.

The *result* is an absolutely unfounded judgment in case No. 21, mistakenly rendered by the court, which is, afterwards, by the same court, held, in the Adams case, to annul all the Wells bonds—even of those holders who were not parties and had no trial. I use the phrase "absolutely unfounded judgment," because, as will be shown, it is wholly baseless in fact, as well as law, [see *infra*, pp , brief.] Practically the court says: One suit for the bondholders of a given series, is all, under the funding law, that we allow, except *ex gratia*. All Wells' bondholders are shut out of the temple of justice, unless they, somehow, get our "indulgence."

This decision seems to point to a very dangerous discretion in one of the parties to such contracts, who (as angels wouldn't) rushes in to sit in judgment; especially dangerous, if the policy of debt-scaling, interest-remitting, or simply repudiating have been adopted. Already Louisiana has established legislative precedents for an Act 3 of 1894; 11 of 1895; and a debt-scaling, interest-remitting or repudiating Constitution of 1899, which may yet affect her $15,000,000 of consols; and why should she not have ancillary judicial precedents? According to this new *res judicata*, or whatever it is, a collusive case will become easy, and the new invention will be found to be "*a new* [and lawful] *way to pay old debts*"—without cost, except "wear and tear"—wearing out the claimants, and tearing up their bonds.

"QUESTIONED AND DOUBTFUL."

I submit that it seems to have been the intent of the State in the funding laws, that the Government

shall legislatively or judicially by statute or plea, declare given bonds "questioned and doubtful," and thus notify and forewarn holders, that fraud, mistake, theft, false entries, etc., etc., whatever, in short, would show nullity, will be set up on trial. See Act 11 of 1875, questioning about $15,000,000 of bonds, and forbidding the funding till the court shall order it, because, of fraud, theft, etc. See Guaranty Co. *vs.* the Board, 105 U. S., 622. See also statute 86 of 1876, and Durkee *vs.* the Board, 103 U. S., 646. And where bonds are not legislatively "questioned and doubtful," nothing short of such notice by plea, can be just, or consistent with honest and fair pleading or practice.

In the cases at bar, no such notice was ever given, because there was no ground of doubt or suspicion. None has ever been shown; I referred to this matter above, when saying, that under the funding law, validity could be put in issue only *sub modo;* I meant by proper plea.

The result, I submit, is this: In the Adams case, the plaintiff proves the unquestioned law—Act 16 of 1864; the lawfully confected bonds; and the sworn official entries, showing a strictly legal issuance of them, all of which entitled him to a judgment. This *prima facie* case shifts the *onus*, and, if the defence attack the bonds, the face recital estops; if the law be attacked, Article 149 of the Constitution of 1868 vindicates it; and if the entries are assailed, they are simply beyond oral touch, unless fraud, theft, mistake, false records, or something showing nullity, is timely pleaded; and I submit that after the plaintiff, on the basis of this law, and according to our practice, makes out a *prima facie* case, it is too late for the defence to urge a "questioning" plea on such grounds, when it has, *in limine* chosen to accept *the very issues, and only them which the law required the plaintiff to tender.*

[Rec. 21, pp. 4 and 17 for answer and court's statement of issues].

by the states funding law, or by the judicial construction and execution thereof. I now submit that the intent, endeavor, and operation of the law, as held and executed by the court, and as appears from its opinions and decrees in these two cases; and the effect on the subjects of the litigation and the rights of action were to impair the obligation of each bond of these plaintiffs, and thus violate articles I, § 10; also to impair the obligation of the second contract, made by each plaintiff with the state, in accepting the funding terms, and tendering the bonds for exchange, and spending time, labor, and money, which, with the bonds themselves, were the consideration of the *new or funding law contract*. If the plaintiffs are not entitled to a judgment for exchange, on proving the validity,—this being what the state stipulated for, the whole law and its working are "a delusion and a snare."

Hence we have two federal shields for the same right; and we are here to find what they are worth.

Applying the opinion and decree of the Sage case to the Adams one as *res judicata*, deprived this firm of a trial on their own bonds, of their own right and cause of action, of their own pleadings, of their own say in court, and trial, and of a judgment on their own issue;—and as the said estoppel was unfounded, and forced on them illegal evidence, it made a case not theirs, and deprived them of "due process of law." They have never had a trial on their own case, their own issues, and their own evidence, and therefore they complain that Art. I, § 10, and Amendment XIV are violated.

"No state shall * * * deny to any person within its

jurisdiction the equal protection of its law." [Fed Amdt. XIV].

Adams & Co. has under the two contracts, (1), the bond contract, and (2), the funding law contract, the same right to a trial on their own case and issues and evidence; to a day in court; and to a judgment, &c., that Sage and hundreds of others have had on theirs; but which were denied to them by *res judicata* —thus violating Amendment XIV.

I merely suggest and submit the federal violations, as this court sees at a glance all the law, precedents, and philosophy of federal jurisdiction.

Evasion of Appellate Correction.

Studied and flagrant have been the endeavors by the state officials, to repudiate these valid bonds, or, under color of law, to nullify them; and studied evasion of appellate revision and remedy seems to have gone on, *pari passu*. Hence this court can but look searchingly for its jurisdiction, and go below statal subterfuges—if any there be. The fell blow that destroys all the Wells bonds with an adverse judgment on one, is the very case that gives Adams & Co. and the other holders the right to federal relief. Though such "thing adjudged" be based on the construction of a state statute, it cannot be of any force here, because it comes under this court's ruling, namely, that when the enterpretation of state statutes, by state courts *conflicts with "the fundamental principles of justice and common right,"* it is not the practice of this court to adopt it.

Not Louisiana, but her officials, should be held responsible for legal and moral wrongs imputed to her; and, virtually, correction falls, as it should, on them. As to judges, she, in her constitution, *commands "all courts"* in "all cases" to *"adduce the reasons on*

which their judgments are founded." This shows that she means, (1), that the said "*reasons*" shall be subjected to forensic, judicial and popular review; (2), that the opinion, joined to the judgment by a "therefore," are one, and must be taken and construed together on appeal; and (3), that this court shall look into the "reasons," as well as the decree, for federal jurisdiction, and for violations of federal right, as well as evasions of federal remedy. And this court's aim seems to have been to find and decide federal questions, and to prevent assertive and sophistical evasions. Indeed, the "supreme law" required the supreme tribunal, within its jurisdiction, to prevent an inferior court from avoiding, or hindering federal recourse; and from doing indirectly what it cannot do directly, as to federal questions and duties. And in its search, it cares little for their non-appearance in pleadings or opinions, if the record indicate that they must have been passed on. *E. g.*, in 4 Wall. 172, it is said that the court below does not mention prescription; but that, as it was set up in the defence, and was mentioned in the bill of exceptions, the court must have passed on it.

I beg leave to add another dictum of this court which shows the evasion, generally accompanying an unjust or repudiating judgment to be an old story. In Chapman *vs.* Goodnow, 123 U. S. 548, the court says:

"We are aware that a right or immunity set up or claimed under the constitution or laws of the United States; may be denied as well by evading a direct decision thereon, as by positive action. If a federal question is fairly presented by the record, and its decision is actually necessary to a determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to, and the right directly refused."

The court below did not act on the record, and "within the scope of the pleadings," as to *res judicata*, but expressly declined deciding the defendant's plea, and improvised and decreed a *res judicata* of its own, thus "impairing" the obligations; "depriving" of "due process of law;" and denying equal rights to the law's remedies, as to Adams & Co. not only, but to every holder of Wells bonds, that may bring suit and claim a "day in court."

Now let us answer the question:

VII. Were Bonds Exchanged for Property?

There is no testimony proving such exchange; and the court had no right whatever to use and weigh oral evidence against the entries, when these were unassailed, because, by so doing, it "*substituted*" and "*used*" "*loose recollections, and uncertainty of memory, for the most sure and faithful memorials which human ingenuity can devise, or the law adopt.*" [Starkie, §648.] In other words, the judicial agent of the law spurned the law's "repositories and memorials of truth," [Ibid.] and "*used*" thereinstead untrue and self-contradictory oral statements from senile memories, of details that took place fifteen or twenty years before, as I proceed to show.

General Wells, Colonel Wise and Major Halsey, the very witnesses, whose "loose recollections" are used by the court to annul the State's sworn official records, absolutely disprove the court's assertion of exchange. And it may safely be said with emphasis, that no word of their testimony impugns or can impugn, *the proof* in the official entries that *the bonds were sold.* And they could consistently, on discovering the entries, have adopted them as a part of their testimony.

The careful reading of the statements of these three witnesses at this point, is indispensable to a proper

understanding of the case. [See Rec., 21, pp. 4–12.] They were in the main correct, and only needed the fixed *data* of the State's official memory, the law's "repositories and memorials of truth" to make their testimony ample. They knew and so testified that Governor Allen got the sugar and Wells the bonds, but showed that they did not remember where, when and how the two events took place, or that they were months apart, nor did they state any entries, or any of the various intermediate steps required to make the transaction, as it was intended to be, honest and legal on both sides—steps amply proved in the Adams case.

These witnesses all testify that Governor Allen, desiring to obtain produce of the highest purchasing power, such as sugar, salt, tobacco, cotton, etc., to aid him in government and in relieving the people, bought of Mrs. Wells on a credit, and received the delivery of, a large quantity of sugar in 1864, for which State bonds were to be given. Of course it became a matter of management, as well as moral, legal and sworn duty to effect the arrangement lawfully on both sides; and, of course, genuine bonds were as essential as genuine sugar.

Wells testifies to the general arrangement; his declining Confederate or State money but consenting to take bonds; his *delivery of the sugar at Alexandria to Isaac Levy, from whom he then got the bonds.* And he repeats that he then got them in exchange for sugar. (Rec. 21, pp. 6, 7).

Wise testifies that *Isaac Levy*, under Governor Allen's direction, *made an exchange of these bonds with General Wells for sugar.* (Rec. 21, p. 7).

Major E. W. Halsey, the only one of the witnesses who speaks from carefully preserved *data*, namely, his own memoranda, which he testifies to, the State's records, and Mrs. Dorsey's book, all of which he cites, and refers to, testifies that his impression was that

General Wells preferred to turn the sugars over to the State as a loan, taking State bonds as evidence, etc.; that the transaction must have been begun as far back as September, 1864, because he made the following memorandum in his book: "September 24, to General Wells, to name agent to receive bonds." And from this, and a probable letter, then written, he "*believes that General Wells was paid for the sugar in question, at that time, in these bonds.*" (Rec. 21, pp. 9, *et seq*).

These aged men looking backward fifteen or twenty years, foreshortened all details and dates into one transaction and time; this view suited the State's interest, and she sat in her own judgment seat.

Now in view of the ever-during proofs in the State's sacred records, let us look at the separate facts as testified to by these witnesses. The sugar was delivered in the Fall of 1864, and was owned and disposed of by the State for several months, her title resulting, not from "exchange" or "loan," but from *sale on a credit;* for she owed the agreed value as a debt probably from October, (or certainly from November 25th), 1864, till February 2d, 1865, when she, at Shreveport, issued and delivered the bonds to Wells' agent, H. M. Wright, *she, meanwhile, owning both sugar and bonds.*

But as assertion is formidable, let us demonstrate more fully. The court below in the Sage case, No. 21, ventured to say that the "proof is *overwhelming*" *against sale,* specifying as the said proof, the testimony of the three above cited witnesses, and the said court repeated the assertion with great emphasis in the Adams case, No. 187, that "the bonds were *unquestionably exchanged for sugar*," though the proof was "overwhelming" to the contrary. Now, the very witnesses, (in the Sage case,) which the court relies on, show the entire error of its basis. Not a word in all their testimony impugns the *proof* in the sacred entries that the bonds were *sold.*

These very witnesses establish beyond doubt the following facts: (1) That the sugar was delivered in the Fall of 1864 to Governor Allen's agent, Isaac Levy, at Alexandria. (2) That *then* the State's possession as owner and her *jus disponendi* began. (3) That the sugar was then shipped by the State, as owner, to Shreveport, her capital, 350 miles up Red River. (4) That Halsey, Governor Allen's private secretary, testifies to three *memoranda* he made at their dates: *First*, September 24, 1864, "to General Wells to name agent to receive bonds"—probably referring to a letter, and making it more than probable that the sugar was delivered in all the month of October, 1864; *second*, November 25, 1864, showing the State's disposal of sugar; and *third*, January 7, 1865, "Wise, statement of Wells sugar loaned"—showing the sugar to be *then* under the State's ownership and disposal—the debt for it due, and the alleged exchange not made.

So we find that the *fact* was proved in the Sage case, and was under the eye of the court, that on February 2, 1865, the debt was still due and unpaid, and that *then* the 184 bonds were owned by, and in possession of, the State, and were transferred at Shreveport by the State, *directly* to Wells' agent, Wright, who *then* thereon collected for Wells from the State, the interest, which fell due on February 1, 1865.

This evidence is all in the Sage case, and is juxtaposited with the mistake made by Wells, *et alii*, on which the court based its decree, viz.: that *when* the sugar was delivered to Isaac Levy at Alexandria, he "*then* delivered to me the bonds." This, (which Wells repeated,) and the "loose recollections" cited in support of it, together with the mistaken plea based on them, are thus proved to be untrue by the witnesses themselves. Note now the fatal errors of the court exposed in the following demonstration:

1. The *fact* that the sugar was delivered to the State at Alexandria in the fall of 1864, and the *fact* that

the bonds were delivered to Wells at Shreveport, in February, 1865, show by positive and undisputed evidence, in the Sage case itself, that the exchange between Wells and Levy, testified to, did not and could not take place.

2. The *fact* that the SUGAR was held by the State as *owner*, from the time of the delivery in 1864, to February 2, 1865, and the *fact* that the BONDS were held by the State as *owner* during *the same time*—up to February 2, 1865, show a second unmistakable error in the court's basis. Exchange was impossible.

3. The *fact* that the bonds were delivered by *the State herself* to *Wells himself*, *i. e.* to his agent at Shreveport, shows beyond question that they were never delivered at Alexandria, never delivered to Isaac Levy, and never delivered by him to Wells.

All this is the result of the testimony in the Sage case, showing THE EXCHANGE THEORY, and therefore, *the judgment based on it*, to be *wholly* UNFOUNDED, and beyond the right of the court to deliver; showing, too, by example, why "loose recollections" of "frail memories" should never be "used" as "*substitutes*" *for the sworn memorials* which the law ordains; and finally exhibiting the illegality and injustice of using a baseless judgment as *res judicata*.

A SECOND OR CRUCIAL PROOF OF THE COURT'S ERROR,

is in the Sage record—evidence, which, if the court saw, it failed to weigh. In the Auditor's "Appropriation Book" for 1865, p. 295, is the following: "February 2, 1865, No. 100, Warrant, Montfort Wells per H. M. Wright, in payment of 184 coupons of interest of $30 each, due 1st February, 1865 on State bonds, issued under Act 16 of 1864, $5,520." This and a duplicate, *mutatis mutandis*, from the "Journal of Expenditures" are certified by Allen Jumel, Auditor, (Rec. 21, p. 13). This brings in H. M. Wright, one of the first

merchants of N. O. as the "agent named to receive bonds." On the same day that the bonds are entered as sold to Wells, viz.: February 2, 1865, Wright is entered as possessing them, cutting off the coupons and collecting for Wells the $5,520 of interest. On February 11, 1865, he had them recognized and registered in the Auditor's Bond Book in the name of Wells. The presumption then from the Sage record is, that as Wright was Wells' chosen agent, and as his possession was Wells's, Levy never had the bonds to swap with Wells for sugar. Hence, *the Sage record proved to the State Supreme Court*, without the aid of the conclusive evidence in the Adams record, *i. e.* without the sworn entries of the chief State officials: (1) That the bonds were not, and could not have been, exchanged at Alexandria. (2) That they were delivered at Shreveport by the State, directly to Wells, *i. e.*, to his agent, so that the instant the State's ownership and possession ceased, Wells's began. (3) That they were never delivered to Isaac Levy and by him to Wells. (4) That they were never exchanged, and (5) That therefore they must have been sold, as the entries in the State's books *absolutely prove* they were.

STILL ANOTHER PROOF OF THE COURT'S ERROR,

as to *an exchange* of bonds for sugar at Alexandria, or any where else, or with Levy or anybody else, results from *Wright's continuous possession* of the said bonds for Wells, from the issue and delivery of them to him by the State, on February 2, 1865, to the first of June, 1865. They were sold to Wells, probably represented by Wright, February 2, 1865; *Wright* then collected the interest for Wells; *Wright* had them registered in the name of Wells by the Auditor, on February 11, 1865; *Wright* held them for Wells, May 13, 1865; and *Wright* paid six of them to Isaac Levy, on

Wells' order, on June 1, 1865. The following document is significant enough to justify quotation: "Wellswood, May, 11, 1865. To H. M. Wright: Please hand to Mr. Isaac Levy or his order, $6,025 in the State bonds you hold belonging to me, and you will oblige your obedient servant, Montfort Wells." Endorsed, is the following: "Shreveport, June 1, 1865. Received on the within, $6,000. Isaac Levy."

We now see again, that Isaac Levy never had the bonds to exchange, and that no such transaction could have taken place. Thus again is shown *the entire falsity of the alleged, direct and technical exchange of bonds for sugar*, and, consequently, the entire want of basis for the Sage judgment, and the absolute injustice of inflicting it as *res judicata* on Adams & Co. I beg leave now to ask if it is not presumable that what is so obvious was presented to, and pressed on, the court.

14 Pet. 133

Having now demonstrated the physical, moral and legal impossibility of the exchange of the bonds for the sugar, which is the entire evidential basis of the Sage judgment, let us expose the wrong of inflicting it as an estoppel on Adams & Co.

VIII. Res Judicata is wholly Baseless.

Not only is the Sage judgment entirely baseless, but the plea of it in the Adams case as an estoppel is in turn false in all its averments. Let us take them up *seriatim:* (see Rec. 187, p. 3).

(1) That *the bonds and cause of action of Adams & Co., are the same that were sued on in the Sage case, "in which the identical demand was rejected."* This statement is entirely untrue. The property and cause of action are not the same. The bonds in the Sage case were Nos. 1, 2, 3, 4, and 5; were 25 years in term: and were signed by the Assistant Secretary of State—

this fact being pleaded as a legal defect: while the Adams & Co. bonds were Nos. 101 to 104; were 20 years in term and were signed by the Secretary of State, (see Rec. 21, p. 24, and Rec. 187, p. 4.) That the bonds of the two plaintiffs were of the same series, and were issued in the same transaction is immaterial, as to *res judicata*. If Mrs. Wells, buy 184 farms, mules, houses, or bonds, in one transaction, surely Sage, buying from her five of them, and Adams & Co., four would get, with their respective properties, the concomitant rights of action, just as if the lady had sold five houses, numbered 1 to 5 to the former, and four, numbered 101 to 104 to the latter, all being on the same street, and bought by her from the same vendor. And it is simply absurd to suppose that Adams & Co., can have their causes of action merged in judgments for or against Sage, when they are not only not cited, or notified, are not a party, and have no interest in the specific subject of controversy, no privity being shown, or knowledge brought home to them. "*The same bonds*," then were not "*the cause of action in the two cases.*"

(2). That "*the bonds * * * sued on in both the said cases, are held and owned by Montfort Wells or his family.*" Two undisputed witnesses in the Adams case prove this to be untrue, (Rec. 187, pp. 8, 9,) and in the Sage case, its untruth is triply proved as will be seen *infra*.

(3). That *B. J. Sage's only interest in the Sage suit was contingent on his success.* Not only the petition but the courts opinion contradicts this while there was no hint of, or attempt at, proof. (See *infra*).

(4). That *Adams & Co., are persons interposed to avoid res judicata," and are "without interest,"* and that the real parties in both suits (*i. e.*, Wells or heirs) are the same. As no attempt at proof was made, the petition stands as true, and besides, see the evidence

cited above, under No. 2.

(5). And, finally, that the object, the cause of action, the parties in interest, and their qualities, are the same in the two suits, and that all the issues involved in this suit, were fully adjudged and settled in the former, and that, therefore, the former judgment is conclusive against Adams & Co., and all the rest of the world.

The plea and its averments are all unfounded in fact, and it is probably owing to this, and to the self-destructive inconsistency, that both courts in the Adams case declined to decide it.

The Supreme Court's omission was all the more remarkable, from its then recent censure of this very neglect of duty, as follows:

"The court below tried the exception, but did not decide it; but tumbled it into the *omnium gatherum*, yclept the merits—a practice which not unfrequently wastes time and labor. An exception, which, if maintained, will terminate the suit, ought to be tried and determined, *in limine*." (See 35 La. An., p.).

But the said court, in the case of Adams & Co., forgot its precept, and practised what it so severely censured—*i. e.*, "*did not decide it*"—leaving the reasons therefor to conjecture. Among the purposes which this false plea would aid was (1) one of counsel, in foisting into the Adams suit, the testimony from the Sage case, of two living and accessible witnesses, despite objections, [see bill, Rec. 187, p. 15,] to avoid the taking of their testimony, *after the discovery of the official entries of sale*, to which, of course, they would conform their new statement; they having testified in the Sage case, from memory, that *the bonds* were exchanged for the sugar. And (2), one of the court, in keeping the door open for the new *res judicata*, namely, that all the holders of the bonds of a given series are concluded by a judgment in a funding suit against one.

The baseless plea, therefore, doubly operated *in*

fraudum legis, and, through illicit and untrue testimony, deprived Adams & Co. of their property, their case, and their day in court, presumably, however, without any such intent of either the counsel or the judges. I am free to consider only the evil—not the motive or purpose.

IX. Were the Facts of the Adams Record Weighed?

I have now the unpleasant task of showing evidences of the court's not heeding, if it even saw, the more important facts of the very record from which the "*reasons*" for its judgment *must come*, seeing that the Constitution commands and oath-binds "*all courts*" in "*all cases*" to "*adduce the reasons* on which their judgment is founded."

At the very beginning of the Adams case, the judicial mind seemed made up, and hardly open to conviction, so that the record was not likely to have been fully studied and appreciated. And why should it be, if the court thought there was a genuine plea in bar?

And here was the trouble! while the State's records were lost, concealed or beyond reach, and while she was (whether intending it or not) actually hiding the—to us—vital truth, she, with her judicial mind, had decreed in the Sage case that a direct exchange of bonds for sugar had taken place, and that, therefore, the bonds were null. And when absolute *proof* of the baselessness of this decree had been found and adduced in this case, the hidden records having entirely cleared up the mystery, that judicial mind had become so fixed as to be changeless, and hence, stronger in expression and emphasis than it was before. "Hence, too, its failure in giving the "reasons" for its judgment, which its own law required. Was not that mind then looking at "*an exception, which, if maintained would terminate the suit*"—to use its own words;

and did not duty, as defined by itself, require decision of that plea, and "reasons" for that "judgment?"

X. Inadequate "Reasons" for Judgment.

It now becomes a painful duty to exhibit many grounds from the record for fearing that the two leading ideas of the court below, namely: (1) the technical *exchange* which it held to be judicially admitted and amply proved; and (2 the *res judicata* just shown to be entirely unfounded, had given it so firm a conviction, not to say bias, that it really reached and considered the merits of no other question of fact or law, in either case.

In applying the *res judicata* of the Sage case to the Adams one, the sourt seems to have forgotten its holding that exchange was the issue, and source of title, in the former case, and was illegal, (Rec. 21, p. 19), while stating that Adams & Co. tendered *sale*, and not exchange, as their issue, and source of title. The difference was owing to recent discoveries of the highest and best evidence, which was not in the Sage case. Moreover, the court forgot that Adams & Co. were in the very plea, which it was then judicially acting on, averred to be an "interposed party," "without interest" in their suit. Where, then, were the chief identities, viz.: the *subject* or cause of action, and the *issue*?

Besides, no identity of party, or privity, or interest, was shown or even asserted in any proper way. The court's hardly specious showing [opinion, Rec. 187, pp. 19–21] will speak for itself. No knowledge of the pendency or the result of the Sage suit, by Adams & Co. is shown and in short, all four of the identities for *res judicata* are absent.

The following, then, in the opinion in the Adams case, is surprising:

"We think *it* [the *res judicata*] *would undoubtedly be good* against Mrs. J. D. Wells and B. J. Sage, from whom Adams & Co. acquired the bonds now sued on."

And the court say that, acquiring the bonds from the parties to that suit *pendente lite*," and being represented by B. J. Sage, that firm is "affected with *full knowledge* of the pendency of the suit."

The court here brought itself to the alternative of dismissing the Adams case, or giving them a judgment, but said "*we do not do so*," *i. e.*, we do not decide the *res judicata*. I can but ask why? Was it because it was obviously false in every averment, as shown? or was it because it was an open door for the new born monster? (see Rec. 187, p. 21).

The *law* of the court is still more surprising, because inapplicable, for the above and other reasons.

A point once adjudicated by a court of competent jurisdiction may be relied on as an estoppel in any subsequent collateral suit, in the same or any other court, when either party or the privies of either party allege any thing inconsistent with it, and this too, whether the subsequent suit be upon the same or a different cause of action. Bigelow on Estoppel, p. 45; Johnson *vs.* Weld, 8 A., 126; Gardner *vs.* Buckbee, 1 Cowen, 120; Edgell *vs.* Sigerson, 26 Mo., 583; Hanley *vs.* Foley, 18 B. Monroe, 519" Beloit *vs.* Morgan, 7 Wall., 619 is also cited. I submit, after a careful examination, that these citations are all inapplicable.

With this beginning, I proceed with my endeavor to show in these remarkable opinions many additional reasons for fearing the judicial mind of Louisiana was inadvertent to, or uncognizant of, the most important and striking facts of the record.

§ I. If the judicial eye and ear had not been shut, how could the mass of untruth, just now exposed, as the only support of *res judicata*, have remained undecided through two trials; and then been recognized,

argued on, and decision expressly declined? "It is not necessary * * that we should decide this point * * * and we do not do so." [Rec. 187 p. 21.]

§ 2. Presumably aiming to extinguish the Adams right of action with the Sage judgment, the court asserts that Adams & Co. "*acquired the bonds sued on*" from "Mrs J. D. Wells and B. J. Sage," and repeats it in another form. This is proved untrue by two witnesses who testify in the Adams case, that these bonds were transferred by the latter alone, to Adams & Co. in June 1881, in payment of a debt. [Rec. 187, pp. 8, 9.]

§3 Presumably with a view of preparing to cover all the Wells bond holders with the Sage judgment, the court holds, in the Adams case, that Mrs. J. D. Wells was a party to the Sage suit, the plaintiff thereof suing "as the assignee and agent of Mrs. J. D. Wells." The court was misled, and the record shows it, for the plaintiff pleads that he "holds as the assignee and agent of Mrs. J. D. Wells and other parties, five certain bonds, * * * which are properly endorsed and assigned to your petitioner, or to the holders thereof." With attention, the court would have seen that if "the five certain bonds" were "properly endorsed and assigned," the title was out of Mrs. Wells, and that the plaintiff did not represent her in the Sage case. And, moreover, by reading its own opinion in that case, it would have seen its self-contradiction, it having said: "The bonds were * * * assigned to the plaintiff herein." If so assigned, how could Mrs. Wells own them, or be a party to that suit, or bound by that judgment. Again, the court ignored Wells's testimony that "*these bonds* were assigned to B. J. Sage and other parties."

§4. The court at the outset of its Adams & Co. opinion "groups together" Mr. Sage's statements as a witness, and concludes by speaking of him as "represent-

ing *the whole* of these bonds, and being the common *agent of all* the owners thereof, for the *express* purpose of prosecuting their claims against the State." The court's object evidently is to show that the Sage judgment affects all the bonds of the Wells series, as it does his, with nullity. The testimony [Rec. 187, p. 6] shows the court's inference to be an error. The proper view, I submit, is that which his statement exhibits, namely, that he is under "obligation to attend to the settlement and litigation" of the Wells' bonds, "*except those that have been transferred*; and the legitimate inference is, that he represents all not transferred—meaning of course those of the Wells heirs, till he comes to settling with the State, whereupon, his "*reservation*" covers all. Therefore, he does not represent the bonds that have been transferred, (which may be many,) if not specially employed. Presumptively, his first professional connection with the Adams & Co. bonds, was on the 18th of February, 1886, when he offered them for funding and exchange. (Rec. 187, p. 10).

§5. In the same opinion, the court acting on its own *res judicata*, (after declining to act on and decide the defendant's baseless plea,) *assumed No.* 187 *to be Adams & Co.'s second suit*, and virtually said to them: If we, *ex gratia*, indulge you in a new trial, you must add your "new evidence" to the testimony of your "former suit"—the Sage case, and "*the whole must be weighed together*; and we must then determine whether, on such condition, we should reach a different conclusion." Then follows immediately, without any visible "weighing" of evidence, or "adducing of reasons," the strong assertion emphasised, that "without a shadow of doubt, the allegations then made were true," and that "the bonds were unquestionably exchanged for sugar;" that Montfort Wells, who ought to know, and the other witnesses say so, and that "*they*

are contradicted by nothing except entries in the Auditor's books, of the same character, though a little more extensive, as those that were presented and discussed by us in the Sage case."

We can now test by comparison the value of the court's statement that the Adams entries of sale are only "*a little more extensive*" than those in the Sage suit and are "*of the same character.*"

Note here that the only entry of sale that had been found when the Sage case was tried, is No. 6 on page of this brief. The Auditor's evidential certificate omitted the heading—"*proceeds of sale,*" etc., and the purchase money, "$184,000," which *suppressio veri* enabled the court to hold in effect, that the Auditor, in making the entry, may have used the word "purchase" in ignorance of its meaning, and that, as shown by the pleading and evidence, the bonds were exchanged for goods, and not sold according to law. The mutilation of the entry was discovered too late for correction, but it was, with its corroborations, deemed ample to justify going to trial. And, indeed, the court in its opinion, failed to make it even doubtful that it, with the concomitants and presumptions proved sale.

We can now see by comparison, whether Nos. 1, 2 and 3, *supra*, p. , in the Adams case, can be held to be only "*a little more extensive*" than No. 6, in the Sage case. The former were absolute *proof* of a sale, which neither testimony nor court could dispute, while the latter was held by the court itself to prove an allegation of exchange. The former being *three proofs of sale* and the latter *no proof of sale*, it seems to follow that the court holds that, arithmetically, as well as legally, 3 is only "*a little more extensive*" than 0.

Again, on the vital issue of sale *vel non*, the court seems to hold that the one entry which *does not mean and prove sale* is "*of the same*"

and prove sale, is "of the same character" with three other entries, which mean nothing but sale, and which absolutely prove it, in direct opposition to exchange.

§ 6. Another striking instance of ignoring the facts and reasonable theories, appears in both of the court's opinions. In case 21, page 19, it imputes to the plaintiff, a theory full of inconsistencies, while in 187, page 23, the theory attributed is more reasonable, but equally indicative of not knowing the facts. "Nothing could be more improbable," says the court "than that the Governor paid to Wells $184,000 * * * with which he bought the bonds." Nor—continues the court—is it shown, that the Governor had the needed funds, and could by law so dispose of them. Now I beg leave to say, with deference, that the rejected theory seems fully justified by the testimony, and reasonable inferences therefrom.

Please note the 6th interrogatory to Halsey, and his answer, as to Allen's policy of state stores, etc., etc,. [Rec. 21 pp. 9, 10,] with his citations of Mrs. Dorsey's "Recollections" etc., [Book X pp. 233—306—especially 238—241,] which he says are "substantially correct," as to "the various methods pursued by Allen to succor the impoverished and distressed people of Louisiana;" e. g. establishing state stores, dispensaries etc., and selling for currency to those who had it; and giving largely to the needy and suffering, "without money and without price." Within one year, said she, "from the single state store at Shreveport, he paid into the Treasury, from the proceeds of sales, $425,-244," besides giving to the needy $22,159, transferring to the state department, $87,326, and disposing of, to the Confederate Government, $627,816—a total business in 7 months, of over $1100,000.*

* I venture to add here a note. The captured archives of Louisiana in the War Department, contain the Treasurer's book for 1865, showing receipts from Allen or his agent, from two of his enterprises, viz. the state store and the state dispensary, for the period from October, 1864, to June, 1865, of over $2400,000. Is it "*improbable*," that he used $184,000 as indicated?

These enterprises were his personal schemes; and he could but have the right to dispose of the proceeds, till he paid them into the Treasury. He was fiscally aiding the state; and as the sugar he had obtained on a credit was a part of his means and vital to his success, and as he was "the soul of honor," it was far from "*improbable*," that he hastened to give her agent $184,000, to buy bonds for her, and *ipso facto*, redeem his plighted faith, especially as he had written to her "to name agent to receive bonds;" as we have the bonds; and as the state herself booked them as sold to Wells, for $184,000 in cash. Had the court read Halsey's testimony, and the history cited, it would have known that the Governor had the funds, and moreover the legal and moral right and duty to use them, to fulfil his sacred promise!

In his Message of January 16, 1865, he states his policy above-mentioned; asks approval; and gets it, *nem. con.* [Act 29 of 1865.] In that message, he says further that he has, in conformity with the law "authorising the *sale* of six per cent. bonds," "had occasion to *sell* only $571,940"—all at ten per cent.; and has cancelled that much of state Treasury notes, [see Confederate Archives, War Office VIII.] But the court's theory is that 16 days later he forgot to sell, bartered $184 bonds to Wells for goods which of course he filed in the Treasury.

§ 7. The courts erroneous view of the records, is again shown by its adoption of a seeming fact, the unreality of which record 21 fully shows; namely, the alleged "judicial admission" of the plaintiff, in the Sage case, that *the bonds were exchanged for sugar*. This the court treats as an "admission" of nullity. But, in fact, the petition alleges the issue of the bonds in conformity with the law, requiring sale, the prayer is consonant; and the court refutes itself by stating the pleadings and issues completely, without

any hint of exchange, or even of sugar. [Rec. 21, pp. 17, 18].

In the expressions containing the so-called "judicial admission," [Id., p. 2,] the plaintiff evidently used the term "exchange" in its widest general sense, and in no technical one; for the very passage of which the court predicates the "admission," uses the phrase "owner and vendor" three times, referring to the fact and date of the disposal of the sugar—thus showing, (1), that Wells was thrice alleged, by that very language, to be the "*vendor*" of the sugar at its delivery; (2), that a *sale* was alleged to be the source of the title by which the state held the sugar; (3), that there could have been no *intent* of the plaintiff to allege a technical exchange, or any disposal of the bonds, not strictly legal; and (4), that the transaction, in view of the evidence, involved the sale of the sugar on a credit. Nay more, the defendant's counsel's brief, in the Adams case, aiming to show the identity of issues, to help his plea of *res judicata*, declared and argued the alleged admission to be "mere surplusage;" as, indeed, the court had treated it, and as it really was. Stephen Pleading, 378; Gould Pl., 499, Greenleaf Ev., § 56, Taylor Ev., §§ 249, 255; see also Phillips and Starkie, verbo *Variance*. I will add that Gen. Wells testifies that Allen "was desirous of *purchasing* sugar; * * * offered Confederate money in *payment* therefor. * * * When I refused to take Confederate money for sugar, he proposed to give me state bonds." This shows that they started with the *intent* to buy and sell. When did that *intent* end?

§ 8. The court virtually holds that, as "the Auditor of Public Accounts" *omitted* the Wells bonds from his list of 1874, they were *not contemplated* by act 3 of that year, because, though issued ten years before, omission and non-contemplation made them void *nunc pro tunc*. "It would require great hardihood,"

says the court, "to say that it was the intention * * * to embrace these bonds." The court should have construed the words: *all* valid outstanding bonds of the state—if it found *doubt* in them—and shown how "all" excluded "*these bonds.*" It escaped the court's notice that funding act 58 of 1877,—three years later—appropriated $5,000, and directed the funding board to "employ accountants and clerical force," to "investigate and ascertain the valid bonds, * * * contemplated in act 3 of 1874, to be funded and exchanged." Why acted the legislature thus, if omission and non-contemplation had produced nullity?

In conclusion, these remarkable opinions contain other serious errors, which I must omit, except for mere passing mention.

On estoppel against the plaintiff, the court cites authorities [Rec. 187, p. 20], all of which are inapposite, because, as is shown, no "judicial admission" was made, [§ 7, *supra*] and because the *res judicata* was abandoned by the defence, by its going to trial on the merits without requiring a decision. And, moreover, the court having invented its own "*thing adjudged*," expressly declined to decide the unfounded one of the defence. The *real estoppel* of the case, however, is against the state, or its representative, the Board, and is fatal; for the plaintiffs' *prima facie* case—namely *the bonds, the law, and the entries of sale*,—entitled them to judgment, especially, as the defence has the onus of any further contest; as the face-recital on each bond becomes a conclusive estoppel; and as there is no plea or proof of fraud, or other vice, showing nullity *ab initio*. Louisiana cases of estoppel against the state: 25 A 65; 28 A. 121, 462; 34 A 359. See also 2 Paine, (Vt), 545; 3 Pick. 224; 4 Bin. 230, 314; 4 Pet. 1, 87; 3 Macq. H. of L. 829; 31 Law T. R. 785.

But against the court itself, is a *still graver estoppel*, which it has disregarded; for validity, or title, is not

within the funding-scheme jurisdiction, unless nullity *ab initio*, is set up in some plea e. g: fraud, theft, mistake &c; for each of these contracts is "law upon the parties," and the "courts are bound to give them legal effect." This applies, also, to the funding-law contract. See Louisiana's Code, Articles 1901, 1945, 1963, and 1965; and her federal Article I § 10.

The gravest estoppel however, or bar to the state's annulling of these bonds—except for fraud or error, is that she, by fully authorized agents, 27 years ago, judged finally of all the conditions precedent to the issue of them; then and there alienated them, receiving an ample consideration in money; and entered both sale and money in her books so that she is now estopped by her own law from a second judgment or act of will—a second *jus disponendi*. See Fletcher *vs.* Peck, 6 Cranch 87; Knox Co. *vs.* Aspinwall, 24 How., 376; Coloma *vs.* Eaves, 92 U. S., 484.

And her now adjudging nullity is *ipso facto* adjudging that she has given false bonds for good property; and that if she were justiciable, she could, under her own, law be put in her own prison, for "obtaining goods under false pretences." However, the court doubly misrepresents her, for, in 1865, her motive and *intent* were to make a legal transaction—buying valid sugar and selling valid bonds; and this *intent* is as lasting as Justice; and her aim to-day is—(no matter what her agents do)—to pay this honest debt.

B. J. Sage,
Of Counsel.

APPENDIX.

LOUISIANA ACT NO. 3 OF 1874.

An act to provide for funding obligations of the state by exchange for bonds; to provide for principal and interest of said bonds; to establish a Board of Liquidation; to authorize certain judicial proceedings against it * * * *."

Sections 1 and 2 provide for a Board of Liquidation, and the preparation of $15,000,000 of 7 per cent. consolidated bonds.

Section 3 provides "that the bonds authorized by section one shall be signed by the Governor, Auditor, and Secretary of State, and the coupons shall be signed by the Auditor and Treasurer; and when so prepared, the said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the state, and all valid warrants, drawn previous to the passage of this act, by the respective Auditors of Public Accounts of the State on the Treasurer thereof, except warrants issued by the auditor in payment of the constitutional officers of the state at the sale of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants; *provided* that the holder of any bond or valid warrant, rejected by a majority of said board, may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; * * *."

LOUISIANA ACT NO. 11 OF 1875.

An act supplemental to Act No. 3 approved January 24, 1874, and to provide for the testing, at the instance of any tax payer, in the courts of the state, the legality and validity of any items of state indebtedness, the legality and validity of what may have been, or may hereafter be, questioned; to prevent the Board of Liquidation under said act No. 3 of 1874, from funding the questionable and doubtful obligations of the State, named or designated in this act, until the same shall have been finally declared legal and valid, by the Supreme Court of the State of Louisiana, * * *."

Section 1 provides "that the Board of Liquidation constituted by the second section of act No. 3, approved January 24, 1874, entitled an act to provide for funding obligations of the state, by exchange of bonds, etc., is hereby prohibited from issuing any bonds in exchange for any outstanding bonds of the state, or warrants drawn previous to the passage of said act by the respective Auditors of Public Accounts of the State on the Treasury thereof, forming items of state indebtedness, the legality and validity of which may have been, or may hereafter be, questioned, until said bonds or warrants shall first, by final decree of the Supreme Court of the State of Louisiana, have been declared legal and valid obligations of the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the constitution of this state,

or of the United States, and for a valid consideration. That any person assessed for state taxes is hereby authorized in his own name, to institute suit, or to intervene in any suit, which may now or hereafter be instituted in a court of competent jurisdiction, in the Parish of Orleans, against said Board of Liquidation to test the legality and validity of any issue of bonds of the state or warrants drawn previous to the passage of said act No. 3, by the Auditor of Public Accounts, on the State Treasury, the legality and validity of which may have been, or may hereafter be questioned; and to inquire into the consideration for which said bonds or warrants may have been issued, and in his own name to prosecute such suit or suits to a final termination; and until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined, by the Supreme Court of the State of Louisiana; and that, in order to facilitate and bring to a speedy termination all matters in controversy, as provided for in this act, every suit hereby instituted, shall have precedence in all courts over all other cases, and to be fixed by motion of either party; the day of trial to be named in the motion, and all other cases fixed for the day named in the motion, fixing such cases for trial, to give way thereto; that all costs incurred in any suits under this act, to the extent of one suit carried to a final issue, as to each separate issue of bonds or warrants, the legality, validity or consideration of which are questioned, if the court shall so determine shall be borne by the State of Louisiana; * * * *provided* that any holder or holders of bonds or warrants whose legality, validity or consideration, is questioned in any suit or suits brought under the provisions of this act, may intervene in said suit or suits, and that the costs of such interventions shall abide the result of the suits in which such interventions shall be filed.

Section 2 declares a list of over $15,000,000 of bonds "questioned and doubtful, as to their legality and validity," and prohibits their being funded and exchanged, except under the final decree referred to of the Supreme Court, among them was more than a million which the carpet baggers stole or sold or issued or reissued, and the most of the others—$14,000,000 and more, were swindles.

ACT 58 OF 1877, provides that the Board of Liquidation shall after the passage of this act, "investigate and ascertain accurately the exact amount, character and description of the valid bonds, * * * comtemplated in act 3 of 1874, to be funded and exchanged for consolidated bonds, which have not yet been funded and converted, * * * to the end that the total debt of the state may be officially established, * * *." The act appropriates $5,000 for its purposes.

ARTICLE 149 CONSTITUTION 1868.

"All rights, actions, prosecutions, claims, contracts, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, shall continue as if it had not been adopted; all judgments, judicial sales, marriages and executed contracts made in good faith, and in accordance with existing laws in this state, rendered, made, or entered into between the 26th of January,

1861, and the date when this Constitution shall be adopted, are hereby declared to be valid except the following laws."

Act widening New Canal, March 14, 1867.
Act concerning crimes and offences, Dec. 20, 1865.
Act about laborers, etc., Dec. 21, 1865.
Act to punish employers, etc., Dec. 21, 1865.
Act exempting from taxes, etc., March 16, 1866.
Act granting ferry to C. K. Marshall, etc., March 10, 1866.
Act authorizing Bd. Levee Comrs., etc., March 28, 1867.
Act concerning the police and police board, etc., Feb. 12, 1866.
This covers Act 16 of 1864 and the bonds.

TERMS OF SURRENDER AND PAROL.

The document is dated Shreveport, May 26, 1865.

"The officers and men paroled under this agreement" will be allowed to return to their homes with the assurance that they will not be disturbed by the authorities of the United States, as long as they continue to observe the conditions of their parol, and *the law in force where they reside.*"